Ontario

Standing Committee on Public Accounts

Report on the Allegation of Conflict of Interest Concerning Elinor Caplan, MPP

2nd Session 33rd Parliament
35 Elizabeth II

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COMITÉ PERMANENT SUR
LES COMPTES PUBLICS

Queen's Park
September 1986

The Honourable Hugh Edighoffer, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Public Accounts has the honour to present its Report and commends it to the House.

Robert Runciman, M.P.P.,
Chairman.

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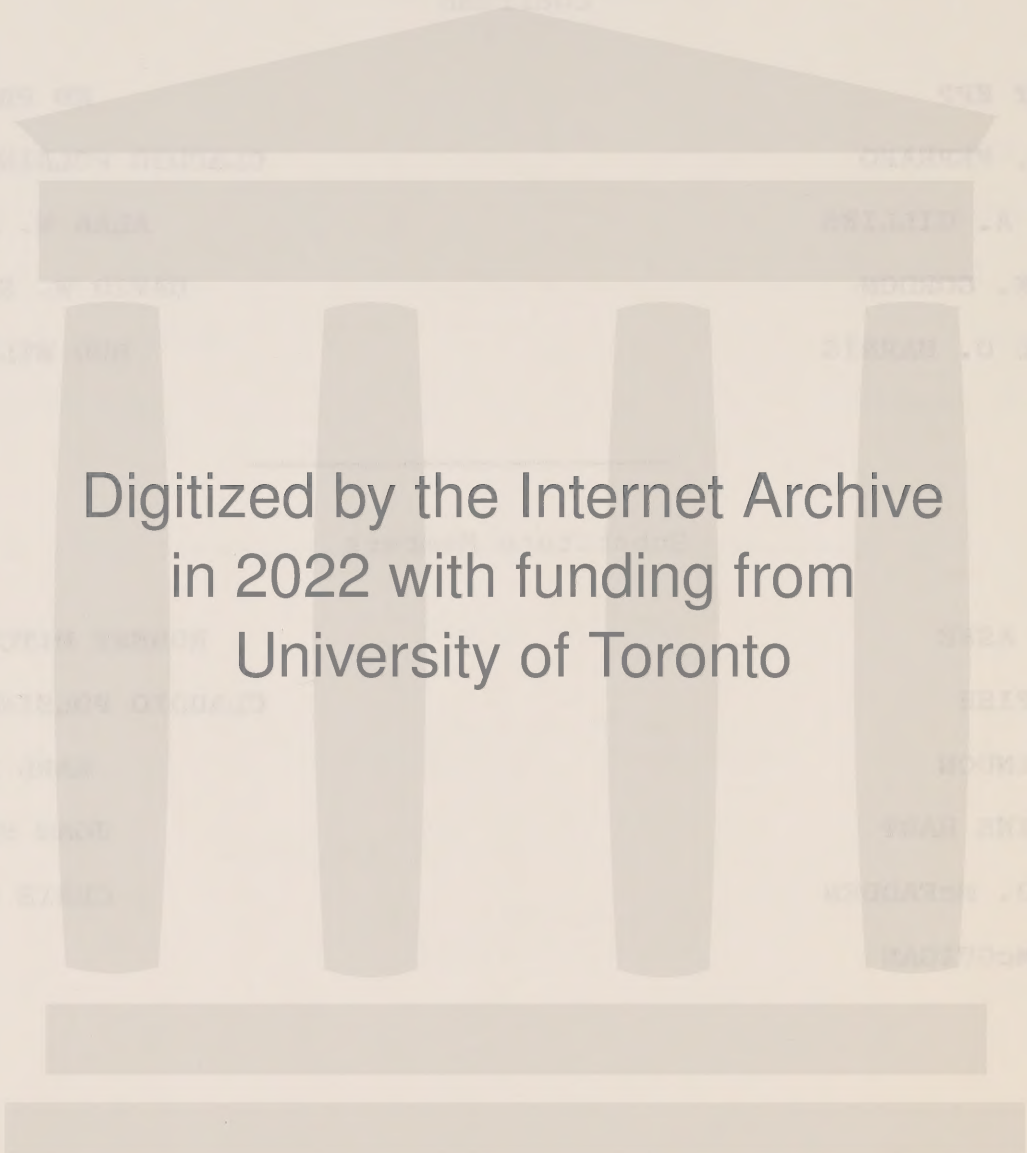

ACKNOWLEDGEMENT

The Standing Committee on Public Accounts gratefully acknowledges the substantial contribution of its legal counsel, Mr. John Bell, and its assistant legal counsel, Mr. Martin Peters, throughout the proceedings. The Committee also acknowledges, with thanks, the able administrative and procedural assistance of its Clerk, Mr. Douglas Arnott, and the significant contribution of its Researcher, Ms. Helen Burstyn Fritz, who provided the Committee with briefing materials and assisted counsel in the preparation of this report.

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A. INTRODUCTION

On **June 16, 1986,** on motion by the **Honourable Robert Nixon** the Legislative Assembly ordered:

> "That the matter of the alleged conflict of interest concerning the **Honourable Elinor Caplan** be referred to the Standing Committee on Public Accounts for immediate consideration by the Committee and report of its findings."

At its organizational meeting held on the 23rd day of **June, 1986,** the Committee retained as its legal counsel, **Mr. John P. Bell,** of the firm **Shibley, Righton & McCutcheon** and as its assistant legal counsel, **Mr. Martin Peters,** also of the firm of **Shibley, Righton & McCutcheon.** At that time the Committee, with the assistance of legal counsel, determined its procedures and defined the following issues respecting which findings and recommendations might be made:

1. What is the meaning and scope of the Guidelines with respect to Conflict of Interest dated **September, 1985,** hereinafter referred to as "the 1985 Guidelines".

2. Has there been an apparent breach or an actual breach, either deliberate or inadvertent, of the Guidelines by reason of **Wilfred Caplan's** personal or corporate association with, efforts on behalf of and remuneration received from **Wyda Systems Inc.,** hereinafter referred to as **"Wyda".**

3. What is the nature and extent of the investment by the **IDEA Corporation,** hereinafter referred to as **"IDEA"** in **Wyda** and was that investment made at all as a result of political influence.

4. Do the existing Guidelines impose adequate and/or clear obligations and restrictions on Ministers of the Crown. If the answer is NO, then how may these obligations and restrictions be strengthened, clarified, and applied. (Exhibit "G")

Subsequently the Committee conducted hearings on 11 days during the period **June 25, 1986** to **August 8, 1986.**

The Committee thereupon deliberated its report over a period of five days. The Committee has decided that the format of its report should follow closely the four issues it has adopted. To ensure that the Committee's findings and recommendations with respect to these issues can be fully understood, a summary of evidence relevant to these issues is included. This summary, of necessity, takes the form of a chronological narrative. Where necessary, the Committee has made findings where a conflict of evidence exists. The Committee has set out its recommendations in Part D of this report. However, the report must be read in its entirety.

B. SUMMARY OF EVIDENCE RELEVANT TO COMMITTEE'S ISSUES

1. Introduction of Persons

To assist the reader in following the Committee's summary of the evidence, the following is a brief description of some of the persons and corporations whose activities during the material times were particularly relevant to the Committee's terms of reference.

(a) **Elinor Caplan**

Elinor Caplan held from **June 26, 1985** to **June 16, 1986** the portfolios in the Cabinet of Minister of Government Services, Chairman of Management Board, and Chairman of the Cabinet. She is currently sitting as a government member of the Assembly. She was elected to the Assembly for the first time on the **2nd of May, 1985,** prior to which she had been an Alderman for the City of North York for 8 years. She is married to **Wilfred Caplan** and has four children.

(b) **Wilfred Caplan**

Wilfred Caplan since March, 1986 has been the Secretary-Treasurer and part owner of **Taurus Metal Trading Corp. ("Taurus")** Until **June 16, 1986,** he provided through his company **Damaza Consultants Ltd. ("Damaza"),** incorporated in **1971** and re-activated by him in **May, 1985,** financial services to clients, primarily **Wyda Systems (Canada) Inc. ("Wyda")** from **June 14, 1985** until **June 16, 1986** when he terminated that retainer on the advice and request of the Premier. From **June, 1985** he was designated by **Wyda** and held out to be its Vice-President of Finance and Administration, an important member of its senior management team.

Wilfred Caplan is a life member of the Certified General Accountants Association of Ontario and a past President of Certified General Accountants Association of Canada. He has been a certified general accountant since **1967.** He also holds a Masters Degree in economics from the University of California (Berkeley) and a Bachelor of Commerce Degree from the University of Toronto.

(c) **Avi Dobzinski and Wyda**

Avi Dobzinski ("Dobzinski") is a citizen of Israel. Prior to leaving Israel, Dobzinski had been a computer specialist with the Israeli Armed Forces and had been President and Chief Executive Officer of a company selling automated drafting systems in Israel. **Dobzinski** travelled to New York in the summer of **1984** to raise money for the development of certain computer systems. While in New York, **Dobzinski** became associated with **The Cumberland Investment Group, ("Cumberland Group")** and its principals, **Leo Gray** and **William Greenberg.** They suggested that **Dobzinski** come to Canada to raise funds by way of an SRTC for the company that was to become **Wyda.** **Dobzinski** came to Canada in **October of 1984.** He obtained his working permit in **February or March, 1985,** became the President and Chief Executive Officer of **Wyda** in **August of 1985** and a majority shareholder of **Wyda** in **October, 1985.**

Wyda was incorporated on the **19th of September, 1984** with the assistance of the **Cumberland Group.** Its incorporator was William Greenberg. At that time, **Wyda** was also an affiliate of **Grancom Limited,** a U.K. corporation. **Wyda's** offices are located in Don Mills, Ontario and it currently employs twenty-eight people.

Since its incorporation, **Wyda,** under the leadership of **Dobzinski,** has been actively involved in developing CAD/CAM technology (the "Product"). The Product is a comprehensive computer software system that will enable the complete automation

of the manufacturing process by computer. This process includes the design, the analysis and the manufacturing of any object by the means of one computer system. In order to develop the Product, **Dobzinski** devised a new mathematical model that is the heart of the new CAD/CAM system. The current CAD/CAM systems do not permit the complete integration of the design, analysis and manufacturing of an object by way of one computer system. The new system will enable an engineer to design any product and then analyze it and manufacture it on the same system.

Dobzinski, on behalf of **Wyda**, retained the services of **Wilfred Caplan** through his corporate vehicle **Damaza** in **June of 1985.**

(d) **IDEA Corporation**

IDEA Corporation ("IDEA") is a Schedule II Crown corporation established pursuant to the IDEA Corporation Act, S.O. 1981, Chapter 34 (Exhibit "L"). The objects and powers of **IDEA Corporation, ("IDEA")**, are to:

(1) promote the process of technological innovation in Ontario, both on a province-wide and a regional basis;

(2) bring together the research capacities of the public sector with the commercial and industrial sector;

(3) enhance the growth and employment prospects of the Ontario economy, both on a province-wide and regional basis.

To achieve those corporate objects **IDEA** may provide financial assistance to individuals, corporations or universities by way of grant, loan, guarantee or purchase of equity shares or other securities.

In the summer of 1985 **Wyda** approached **IDEA** with regard to financial assistance in the development of its product. The individuals at **IDEA** who were actively involved in the application of **Wyda** and the recommendation to its Board of Directors that **IDEA** invest in **Wyda** included: **Harold Blakley**, the President of **IDEA**; **Daryl Logan** and **Geoff Cannon**, Vice-Presidents of **Innovation Assistance** and **Venture Investments** respectively; **Pat Parikh** and **Bruno Maruzzo**, Managers at **IDEA**. **Ian Macdonald** was the Chairman of the Board of **IDEA**.

For the purposes of this report **IDEA Research Investment Fund Inc.**, the wholly owned subsidiary of **IDEA** which invested in **Wyda**, will also be referred to as **"IDEA"**.

IDEA was wound up by the Government as of June 30, 1986. Its portfolio is now managed by the **Ontario Development Corporation** (**"ODC"**).

(e) **Ivan Fleischmann and Canadian Intercorp**

Ivan Fleischmann ("Fleischmann") is the former executive assistant to **John Roberts**, a Cabinet Minister in the Trudeau Government. He has been an active member of the Liberal party, both provincially and federally, for many years. In addition to acting as executive assistant for **John Roberts**, he was also instrumental in assisting various Liberal members with their campaigns over the years.

Fleischmann is an old friend of **Wilfred Caplan**. They have known one another since their school days. **Fleischmann** has also known **Elinor Caplan** for many years. They are former neighbours and used to vacation in the same area.

Fleischmann is the President of **Canadian Intercorp, ("Intercorp")**. **Intercorp** was established by **Fleischmann** in **March of 1982** in order to provide three services to the business community:

"1. Liaison between the private sector and the government in the area of all federal and provincial government assistance programs;

2. Information gathering and forecasting for private sector clients who may be affected by government actions; and,

3. Direct action and personal representation at bureaucratic and political levels where required by clients, including preparation of briefs and submissions to Investment Canada, Royal Commissions, Parliamentary Committees, Minister and other levels of government. (Exhibit "S-1")

In early **June of 1985 Fleischmann** was retained by **Wilfred Caplan** on behalf of **Wyda** substantially to provide services in obtaining second-round financing for government assistance programs.

(f) **Joyce Bryant**

Joyce Bryant ("Bryant") was **Elinor Caplan's** personal secretary between **May 22, 1985** and **May 15, 1986.** Her association with **Elinor Caplan** began when she was employed by the Municipality of North York at the time that **Elinor Caplan** was an Alderman in North York. During the period in which the Liberal government was formed, and in particular, from **June 24th** until **July 19th, 1985 Bryant** was on holiday.

One of **Bryant's** responsibilities while **Elinor Caplan's** secretary was to assist **Wilfred Caplan** in ensuring that the requirements of the Conflict of Interest Guidelines were met.

(g) **Blenus Wright**

Blenus Wright ("Wright") is the Assistant Deputy Attorney General (Civil Law). Since **1972,** he has been the designated official responsible for advising and assisting Ministers of the Crown on matters concerning the interpretation of, and compliance with, the obligations and restrictions of the guidelines in force.

(h) **Mary Eberts**

Mary Eberts ("Eberts") is a partner of the law firm **Tory, Tory, DesLauriers & Binnington.** Shortly after the **May, 1985** provincial election, she was recruited to assist with the change of government as a member of the transition team. Her responsibilities included proposing and drafting amendments to the Conflict of Interest Guidelines, ("Guidelines") (Appendix 1), considered appropriate in the circumstances and advising members of the Liberal caucus, both individually and collectively, on the Guidelines and particularly the appropriate manner of compliance with its obligations and restrictions.

(i) **Peter Barnes**

Peter Barnes ("Barnes") has been the Deputy Minister of the Ministry of Community and Social Services since the **11th of September, 1985.** Previously he had been the Assistant Deputy Minister of the Ministry of Industry, Trade & Technology. Pursuant to an Order-in-Council dated the 22nd of March, 1982, the Minister of Industry, Trade & Technology was designated to administer the IDEA Corporation Act. One of **Barnes'** activities as Assistant Deputy Minister involved overseeing the administration

of **IDEA**. From **July 1983** until **April of 1985** he was the Secretary of the **IDEA** Board of Directors and a member of that Board until **April 1986**.

(j) **John Kruger**

John Kruger ("Kruger") is the Special Advisor to the Premier on Crown Corporations. In that capacity, he was asked by the Premier in **August of 1985** to undertake a review of a number of Schedule II Crown corporations. One of those corporations was **IDEA**.

(k) **Robert Carman**

Robert Carman ("Carman") is the Secretary to the Cabinet. In this capacity he is responsible for providing advice to the Premier on policy issues that come before Cabinet, the running of the Cabinet office and the leadership of the public service in terms of human resources, management and related matters. He is also responsible for ensuring that the guidelines in force are available to all Ministers, Parliamentary Assistants and personal staff of Ministers as well as to the public. Further, he oversees the filing of depositions made by Ministers and Parliamentary Assistants, etc. pursuant to the 1985 Guidelines.

(l) **The Cumberland Investment Group**

The Cumberland Investment Group ("Cumberland Group") is a New York based investment organization of which **Leo Gray** and **William Greenberg** are the principals. Some of the objects and purposes of **Cumberland Group** are to assist foreign corporations in obtaining financing in Canada through the means of "SRTC" financing, government funding, oversight supervision, and

investment banking services. Towards that end, **Cumberland Group** entered into an engagement with **Wyda** on **October 20, 1984.** (Exhibit "Q-15")

From **September 19, 1984,** the day of incorporation of **Wyda,** until **August, 1985, Greenberg, Gray** and their corporations owned and controlled **Wyda. Dobzinski's** involvement with **Cumberland Group,** on behalf of **Wyda** was structured such that **Wyda** could obtain FIRA approval. On **August 15, 1985,** 75% of the shares of **Wyda** held by **Cumberland Group** were transferred to **Dobzinski.** The remaining 25% of the shares were held in trust in respect of financing from a U.K. company called **Grancom Limited.**

On **August 15, 1985,** the directors of **Wyda** authorized **Dobzinski** and a relative to purchase 75% of the common shares of **Wyda** for the sum of $200,000 by way of the delivery of two promissory notes in the principal amount of $100,000. **Dobzinski** has not as yet paid the $200,000. One of the terms of the **IDEA** investment in **Wyda** was that **IDEA** funds would pay this $200,000 debt owing to **Cumberland Group.**

(m) **Grancom Limited**

Grancom Limited, ("Grancom") is a U.K. corporation incorporated on the **8th of December, 1982.** Its secretary is **Sofimar S.A.** of Monrovia, Liberia. Its one listed director is **Imre Rochlitz** of Geneva, Switzerland. **Grancom** is referred to by **Cumberland** in its engagement letter of the **20th of October, 1984** as an affiliate of **Wyda.** On the **2nd of November, 1984, Grancom** sold to **Wyda** confidential proprietary CAD/CAM modelling software development tools and supporting materials that were used in the development of the Product. The sale was for $1,500,000. The terms of the sale were that $500,000 was to be paid on delivery. The remaining debt owing was to be paid by way of four promissory

notes which became due and payable on: **January 1, 1987, July 1, 1987, January 1, 1988 and July 1, 1988.** This purchase of equipment was not secured in Ontario.

(n) **Budgrove Limited**

Budgrove Limited, ("Budgrove") is a U.K. corporation incorporated on **June 15, 1982. Budgrove's** secretary is one **John Anthony Clare** of London, England. It's one listed director is **Imre Rochlitz** of Geneva, Switzerland. On **October 26, 1984, Budgrove** sold to **Dobzinski** twenty colour BECAD work stations and six motorola development work stations for use in the development of the Product. The equipment was sold for $3,851,000. The terms of the payment were a down payment of 30%. The remaining debt was to be paid by way of thirty-six equal monthly instalments, in the form of promissory notes in the amount of $97,445.00 inclusive of interest at 14% per annum. The first promissory note was to become due and owing on **November 1, 1985.** This purchase of equipment was not secured in Ontario.

2. Chronological Summary

1. On **September 14, 1972, The Honourable William Davis,** Premier of Ontario announced the Guidelines. These Guidelines were identical to those issued by **Premier Peterson** in **September 1985** ("the 1985 Guidelines" - Appendix 2) save and except the following:

(a) the "blind trust" provision did not permit a private company in which a Minister or his or her family have an interest to become contractually involved with the Government of Ontario; and

(b) they did not contain a "contractually involved" exception clause permitting a Minister to enter into a contract with the government which is provided for by legislation or regulation and which, by the terms of the legislation or regulation is available "even handedly" to all members of the public.

(c) there was no option of a "frozen blind trust".

The salient provisions of the 1985 Guidelines will be more fully reviewed later in this report.

2. The Conservative government of **Premier Davis** designated **Wright** as the person responsible for advising Ministers of the Crown on matters concerning the interpretation of and compliance with the obligations and restrictions of the Guidelines. **Wright** has continued to perform those functions with respect to the 1985 Guidelines until the present.

3. During this period the advice given by **Wright** to Ministers of the Crown and his interpretations of the salient provisions of the Guidelines restricted its scope and the circumstances to which the restrictions and obligations were to apply.

4. At the end of **April, 1985 Wilfred Caplan** terminated his association with **PEC Financial Corporation** as its Secretary-Treasurer and Chief Financial Officer. **Mr. Caplan** had had an association with that company from **1978.**

5. On **May 1, 1985 Wilfred Caplan** re-activated his consulting company, **Damaza,** which had been inactive for a number of years.

6. In early **May, 1985, Wyda** was in need of and actively continued to seek second-round financing to complete the critical development stage of its Product. Also at this time, **Wyda,** and particularly **Dobzinski,** recognized the need for a financial advisor to assist in the raising of capital and to otherwise assume responsibility for and control over the company's financial and administrative matters.

7. The provincial election was held on **May 2, 1985.**

8. During the latter part of **May, Dobzinski** was introduced to **Wilfred Caplan** by **Wyda's** legal counsel as a suitable choice for **Wyda's** financial advisor. At their first meeting, they discussed **Mr. Caplan's** experience, **IDEA** as a potential investor in **Wyda,** and in general terms various alternatives to **Caplan's** retainer. The evidence is unclear as to the precise date when the initial retainer was finalized. It was, however, concluded some time prior to **June 16, 1985.**

The terms of the initial retainer included the following:

(a) $2,000.00 per month in full satisfaction of expenses incurred;

(b) 5% of the equity of the corporation plus $50,000.00 upon the closing of second-round financing obtained by or through the efforts of **Mr. Caplan.**

The percentage equity and lump sum payment components of the retainer were subsequently changed as a result of negotiations between **Dobzinski** and **Wilfred Caplan** culminating in the retainer evidenced by the **January 31, 1986** agreement (Exhibit "I", p.5) which is detailed further below. In all the retainer was changed at least five times. At all material times **Damaza** billed **Wyda** on a monthly basis for services rendered and was paid accordingly.

9. Also during the latter part of **May, Eberts** joined the **Liberal Transition Team.** She undertook certain preparation to permit her to make recommendations respecting any amendments to the Guidelines and to advise members of the Liberal caucus, both collectively and individually, on any relevant conflict of interest matter.

She came to realize relatively early that, at least on a short term basis, the amendments ultimately incorporated into the 1985 Guidelines, were required. In fact, during her meetings with **Wright** in **late May** or **early June,** the amendments were suggest by **Wright** as necessary.

10. In early to **mid-May, 1985 Elinor** and **Wilfred Caplan** travelled to the Far East on vacation. During that trip, **Wilfred Caplan** informed **Elinor Caplan,** in general terms, of the retainer he was then negotiating with **Wyda,** including the equity and lump sum payment contingencies.

11. On **May 22, 1985,** after her return from the Far East, **Elinor Caplan met** with **Eberts.** During that meeting, **Eberts** gave **Elinor Caplan** some explanation of the Guidelines and informed her that they were under review for possible amendment. As a result of **Eberts'** explanation of the obligations and restrictions of the Guidelines, **Elinor Caplan** suggested that **Wilfred Caplan** meet with **Eberts** to review in detail the retainer he was negotiating with **Wyda.**

12. On **June 2nd** and **June 6, 1985, Elinor Caplan** had, respectively, lunch and a telephone conversation with **Fleischmann,** during which he congratulated her upon her election to the Assembly and offered his assistance as an old friend of the family. There is no evidence that either of these discussions included particulars of **Wyda** or **IDEA.** Following these events, **Fleischmann** both organized and sold tickets for **Elinor Caplan's** fundraising breakfasts.

13. **Wilfred Caplan,** through **Damaza,** started work for **Wyda** around **June 14, 1985.** From that time through to **June 16, 1986** he performed all required financial and related administrative services for the company. He was designated as **Wyda's** Vice-President of Finance and Administration and was so described in business cards (Exhibit "I", p.18), correspondence issued in the ordinary course of business, and documentation issued by **Wyda** promoting investment. Throughout this period he conducted company business on **Wyda's** behalf with numerous individuals, including **Wyda's** accountants, lawyers, bankers.

14. On **June 17, 1985 Damaza** issued its first invoice for consulting services to **Wyda** for the period **June 17th through July 16, 1985** in the amount of $2,000.00 (Exhibit "Q-1", p.1). In fact for all of the following months up to and including **April 16, 1985,** invoices were issued monthly for the same amounts and were paid by **Wyda.**

During the period of his retainer, **Wilfred Caplan** incurred certain out-of-pocket monthly expenses averaging $1,700.00.

15. On **June 24, 1985 Eberts** and **Wright** met with **Wilfred Caplan** to review the circumstances of his previous and current business activities, the **Damaza** retainer with **Wyda**, and **Wyda's** potential involvement with **IDEA** or **ODC**.

Eberts' notes (Exhibit "N-10") taken at this meeting record the following:

> "Arrangement with present client - receiving equity might be sensitive -"
>
> "Clearly - withdrawal his only option"
>
> "- prepared to do whatever is necessary - **Elinor** to sell -"

Eberts, in the presence of **Wright**, clearly advised **Wilfred Caplan** that the retainer with **Wyda** as it then existed and, particularly, the equity and lump sum payment contingencies as they might relate to funding from provincial sources, would violate the Guidelines and that the only remedy was not to continue his association with **Wyda**.

She clearly advised him that he could not under any circumstances, be on the "front line" of any negotiations on behalf of **Wyda** or any company with whom he or **Damaza** had similar arrangements in respect of any efforts for provincial funding. It is signficant that she did not distinguish at all between any services performed by **Wilfred Caplan** personally or through his corporate vehicle, **Damaza**.

It does not appear that **Eberts** or **Wright** were advised at this meeting nor at any time thereafter that **Wilfred Caplan** was held out as **Wyda's** Vice-President of Finance and Administration

nor were they aware of the nature and extent of his duties and responsibilities in that regard. It also does not appear that they were ever made aware of or ever asked to give advice on the extent of Wilfred Caplan's dealings with IDEA representatives.

16. Shortly after his **June 24, 1985** meeting with **Wright** and **Eberts, Wilfred Caplan** decided that he should end **Damaza's** business relationship with **Wyda.** He was concerned that his opportunity to earn an equity position in **Wyda** and a lump sum payment would be significantly diminished. It was no longer a good business deal for him.

He reported his decision to **Dobzinski,** who prevailed on him to remain. **Dobzinski** convinced **Wilfred Caplan** that sufficient opportunity existed for funding from sources other than the provincial government and that **Wyda** and **Dobzinski** needed his contribution to **Wyda's** ongoing business efforts. Recognizing the need to eliminate the contingency component for provincial government funding and the requirement that **Wilfred Caplan** not deal directly with provincial government sources, he decided to remain with **Wyda** with the terms of the retainer altered accordingly.

17. Throughout this period, and in fact **prior to June 10, 1986, Wilfred Caplan** did not advise **Elinor Caplan** of:

(a) the nature and extent of the advice received from **Eberts** and **Wright** on **June 24th;**

(b) the decision to terminate the retainer and subsequent reversal of that decision at the insistence of **Dobzinski;** and

(c) his designation and represention at large as **Wyda's** Vice-President of Finance and Administration and the nature and extent of his activities in that regard.

18. On **June 25, 1985 Elinor Caplan** was invited by the Premier to serve in his Cabinet. From that time until she resigned she arranged for her husband and certain of her personal staff to assume all of the responsibilities for ensuring that she and her family were in compliance with all of the obligations and restrictions of the 1985 Guidelines. During this period her involvement with the 1985 Guidelines appears to have been little more than that of a signatory to communications prepared on her behalf. Although she reviewed certain of the conflict of interest disclosure forms filed with the Clerk's Office, she relied on others for completeness and accuracy.

19. Before the **end of June, 1985,** because of the advice he had received from **Eberts** and **Wright** and the altered terms of his retainer, **Wilfred Caplan** recommended to **Dobzinski** that **Wyda** acquire the services of someone else to assist it in seeking funding from provincial sources. He recommended his long-time friend **Fleischmann** and his corporate vehicle, **Intercorp. Wilfred Caplan** believed that **Fleischmann** and his company were, under the circumstances, and considering **Wyda's** needs, the best choice for such services.

20. On **June 28, 1985 Wilfred Caplan** and **Dobzinski** met with **Fleischmann** and settled the terms of **Intercorp's** retainer. While the normal **Intercorp** charge of 10% of the net benefit of any successful application for government funding was intially agreed to by **Wyda,** this was subsequently reduced to 1% of the net benefit apparently due to the perceived complexity of the application and the inability of **Intercorp** to process it as effectively as required.

Wilfred Caplan did not, prior to the commencement of this Committee's hearings, advise **Elinor Caplan** that **Fleischmann** and his company had been retained by **Wyda,** of any efforts undertaken by **Fleischmann** on **Wyda's** behalf, or of the fee ultimately paid to **Intercorp** in **April, 1986** in the amount of $30,000.

21. On **July 8, 1985 Eberts** sent a letter (Exhibit "N-10A") to **Elinor Caplan** enclosing certain conflict of interest forms completed during the transition phase and confirming certain discussions with and advice given to either or both herself and **Wilfred Caplan.**

Particularly, **Eberts** confirmed:

> "As you are also aware, **Blenus Wright** and I have advised **Wilf** that contact by **Damaza** with agencies of the Ontario government looking for investment capital would present difficulties, even if he were not to take an equity in the clients benefitted or sought to benefitted. He has advised that he will sever the relationship between **Damaza** and its present client **Wyda,** for whom he had planned to seek Ontario government funding." (emphasis added)

Elinor Caplan did not recall receiving this letter. Further, prior to the commencement of this Committee's hearings, she was not aware of the substance of the advice given therein by **Eberts.**

Eberts confirmed in her testimony that she intended to include in her advice that **Wilfred Caplan** not under any circumstances be a "front man" in any dealings between **Wyda** and the provincial government, and that the relationship between **Wyda** and **Damaza** as described by **Wilfred Caplan** in the **June 24th** meeting not continue.

During her testimony, she offered the Committee certain definitions of the phrases, "present difficulties" and "sever the relationship" which were unique at best. The Committee notes that

this letter was written by a qualified professional giving advice to a client in respect of an extremely important matter. The Committee concludes that at the time the letter was written, **Eberts** intended that the phrases in question be understood by the **Caplans** to have their ordinary meaning.

22. The **July 8, 1985 letter** from **Eberts** was apparently received by a member of **Elinor Caplan's** staff. The Committee was not provided with any explanation of why the letter was not brought to **Elinor Caplan's** attention or why the original as received had not been retained.

Some time around the **end of July,** a member of **Elinor Caplan's** staff read the letter over the phone to **Wilfred Caplan.** During that discussion it was decided that a reply be prepared, taking into account **Wilfred Caplan's** actions following the advice he received at the **June 24th** meeting. Although **Wilfred Caplan** took issue in his testimony with some of the points in the letter, no reply was ever prepared or delivered recording any inconsistencies or disagreement.

Wilfred Caplan did state to **Wright** and **Eberts** that he would change the nature of the retainer between **Damaza** and **Wyda.** But, he did not understand **Eberts'** advice to be that the retainer be terminated for all purposes. However, in view of **Wilfred Caplan's** subsequent decision to terminate the retainer with **Wyda** and his efforts in that regard, the Committee concludes that he gave the advice contained in this letter the ordinary literal interpretation that was intended by its author: that the retainer probably violated the Guidelines and **Damaza** should withdraw from its association with **Wyda.**

23. On **July 18, 1985 Fleischmann,** after a meeting with the Minister of Industry, Trade and Technology on a matter unrelated to **Wyda,** met with the Minister's assistant, **Peter Wilkinson,** concerning **Intercorp's** client, **Wyda,** and the opportunity for

investment on the part of **IDEA.** **Wilkinson** indicated at that meeting that **Barnes** and **Michael St. Amant** were the best people for **Fleischmann** to pursue in that regard. **Fleischmann** gave **Wilkinson** a copy of the then current **Wyda** Product Outline and Business Plan (**IDEA** Exhibit "2") which included a description of **Wilfred Caplan** as Vice-President, Finance and Administration and his education and employment resume.

24. On **August 6, 1985** a letter (Exhibit "N-15") for the signature of **Wilfred Caplan** was typed in the offices of **Elinor Caplan** addressed to her on the letterhead of **Damaza.** The Committee has been unable to determine who drafted this letter although it is clear that it was not prepared by **Joyce Bryant, Elinor Caplan's** personal secretary, the person identified as the author by **Wilfred Caplan.**

Regardless of who actually drafted the letter, its content could only have originated from **Wilfred Caplan.** Further, there is some confusion about whether the letter was ever sent to **Elinor Caplan** since she has no recollection of its receipt or its contents and **Wilfred Caplan** indicated to the Committee that he eventually decided not to send it. That notwithstanding, a copy of the letter was sent to and received by **Eberts,** who retained it in her file. That letter was the last contact she had with the **Caplans** prior to **June 10, 1986.**

The letter confirms advice understood to have been received from **Eberts** and **Wright** on the **June 24th** that:

> "...I would not violate the guidelines if **Damaza Consultants Limited** was not involved in contacting or negotiating with any Ontario ministry or agency seeking Ontario government funding on behalf of its clients". (emphasis added)

In describing **Wilfred Caplan's** efforts to terminate the retainer, the letter stated that:

> "When **Damaza** attempted to withdraw from its engagement with **WYDA Systems (Canada) Inc., WYDA** requested that **Damaza** continue its consulting relationship with WYDA on an internal basis only, with no contact whatsoever with any Ontario Government body... **Damaza** has continued its client relationship with **WYDA** on this new basis since **mid-June."** (emphasis added)

It is clear that **Wilfred Caplan** attempted to follow **Eberts'** advice by taking the safest course of action: "to withdraw". However, he ultimately chose the alternative course which, although riskier, was believed on professional advice not to "violate" the Guidelines: to continue on an "internal basis only, with no contact whatsoever with any Ontario Government Body...".

It is also clear that this represents the last advice he received from **Eberts** and **Wright** on the subject of his involvement with **Wyda.**

25. **Bryant** testified that she typed this letter from a handwritten version given to her by **Elinor Caplan** which she, **Bryant,** believed to be in **Wilfred Caplan's** handwriting. When she completed typing the letter, she handed it directly to **Elinor Caplan** and asked her opinion on its format. After examining the letter, **Elinor Caplan** advised **Bryant:** "that's fine".

26. In her testimony **Elinor Caplan** indicated that she was unaware of the letter or its contents until after the Committee's hearings had commenced.

The Committee accepts **Elinor Caplan's** testimony that had she in fact been aware of this letter and the **July 8th** letter from **Eberts,** she would have taken steps which would have eliminated any need for this Committee's inquiry.

27. On **August 9, 1985, Fleischmann** telephoned **Barnes** and **Blakley** to arrange meetings with them for **August 14th** and **August 19th** respectively.

28. Later that day, **Barnes** and **Blakley** had a discussion respecting **Fleischmann** and **Wyda.** It is clear that **Fleischmann** communicated to either or both **Barnes** and **Blakley** that he was representing **Wyda** in its efforts to obtain provincial funding and particularly from **IDEA.**

29. On **August 12, 1985 IDEA** received a **Wyda** Product Outline and Business Plan. The Committee heard evidence on a number of possible sources of this document. The actual sender of the document is less significant than the timing of its receipt in relation to **Fleischmann's** discussions and meetings with **Barnes** and **Blakley.**

30. **Fleischmann** and **Barnes** met for lunch during which **Fleischmann** explained **Intercorp's** business operation, his client **Wyda**, its need for funding. **Barnes** explained **IDEA's** mandate, including its funding availability for **Fleischmann's** clients, **Wyda** among them.

It appears that during their discussion, **Fleischmann** described himself as both a "political hack" and "lobbyist", although according to **Fleischmann,** not in the sense that **Barnes** and others interpreted those phrases.

31. Later that day **Fleischmann** met with **Hershell Ezrin,** of the Premier's Office, and later with **Peter Wilkinson** on matters which **Fleischmann** stated did not concern **Wyda** or **IDEA.**

32. On **August 15, 1985 Dobzinski** acquired shares in **Wyda** previously held by **Laurie Greenberg** and **Leo Gray** and their related companies pursuant to the exercise of certain rights contained in an agreement between them dated **October 20, 1984.**

33. **Fleischmann** telephoned **Cannon** at **IDEA** on **August 16, 1985** to inquire about **Wyda's** application.

34. On **August 19, 1985 Blakley** met **Fleischmann** wherein they discussed the business operation of **Intercorp, IDEA's** mandate and funding availability. **Wyda's** application was mentioned during this meeting particularly to confirm that the Product Outline and Business Plan had been received. **Fleischmann** did not disclose to **Blakley** during that meeting, or at any time subsequently, the terms of his retainer with **Wyda** and specifically that he would receive 1% of any monies invested by **IDEA.**

35. **Elinor Caplan** met with **Fleischmann** in her office at Queen's Park on **August 20, 1985.** Both testified that **Wyda** was not discussed at this meeting.

36. **Fleischmann** again called **Barnes** on **August 23, 1985** to follow up with the progress of **Wyda's** application to **IDEA.**

37. **Wilfred Caplan** informed **Elinor Caplan** on **August 26, 1985** that **Wyda** had made application to **IDEA Corporation** for funding. Although **Wilfred Caplan** did not describe the extent of his involvement with **IDEA** on behalf of **Wyda,** he did inform his wife that he had received advice from **Wright** that he was in compliance with the Guidelines.

38. **Kruger,** on directions from the Premier, began his review of the **IDEA Corporation** on **August 30, 1985.**

39. **Fleischmann's** and **Intercorp's** efforts on behalf of **Wyda** with **IDEA** were completed by the **end of August, 1985. Fleischmann** did not hear anything further about **Wyda** or **IDEA's** decision to invest until **April, 1986** when he was invited to submit his account to **Wyda** by **Wilfred Caplan.**

During the period **September, 1985** through to the **end of January, 1986** **IDEA** proceeded to assess **Wyda's** application, including the nature of the investment it was seeking, its senior management team, market projections it had prepared and, most importantly, the technology of the Product that it was then developing. At the outset **Wyda** informed **IDEA** that it was seeking an additional six million dollars to develop the Product through to the marketing stage. **Wyda** did not then identify a range of equity that it was prepared to give up for this investment.

During this period **IDEA** arranged to have the Product assessed independently by the **Ontario CAD/CAM Centre** and a leading North American expert in the area of CAD/CAM technology. In both cases the assessments were positive and appear to have remained so to this day.

40. From the very beginning **IDEA** personnel were aware of the asssociation of **Wilfred Caplan** with **Wyda** and that he was the husband of **Elinor Caplan.**

In **IDEA's** first memorandum (IDEA Exhibit "4"), wherein **Wyda's** application, operation and Product were reviewed, **Wilfred Caplan** was described as part of **Wyda's** management team and Vice-President Finance of **Wyda.** The initial assessment of the management team was that it was "comprehensive and impressive".

Further in this memorandum its author, **Pat Parikh** commented that:

> "Apparently this company is backed by prominent people and **Harold Blakley** wants to review this assessment with **Peter Barnes** after it is completed. He has asked me to keep him informed regarding our review".

Although the evidence is clear that **Parikh** and others did keep **Blakley** informed regarding their review until the fall, both **Barnes** and **Blakley** testified that they did not review the

assessment together. Barnes was appointed Deputy Minister of Community and Social Services on **September 11, 1985**, two days after this memorandum, and according to his testimony, he had no further business contact with **IDEA**, although he remained on their Board of Directors until **April, 1986** and did attend **IDEA** Board meetings.

The **September 9th, 1985** memorandum closes with a reference to a comment made by **Dobzinski** that "he has sufficient monies for another year and a-half!".

The prominent people referred to in the **September 9th** memorandum it seems referred to at least **Leo Gray** and the **Cumberland Group**. The evidence is unclear whether it included **Wilfred Caplan** or **Fleischmann**, although **Blakley** and others at **IDEA** were certainly aware of their involvement at the time.

41. The 1985 Guidelines as amended appear to have been "issued" around **September 17, 1985**. There was apparently no formal announcement of this event. Rather, the 1985 Guidelines were distributed internally to Ministers, parliamentary assistants and confidential staff during the latter part of **September, 1985**. All those subject to the 1985 Guidelines were given a grace period to comply in all respects.

42. There was no process established or continued to ensure that those subject to the 1985 Guidelines fully understood all of their implications, including what affect, if any, the amendments had on the nature and extent of the obligations and restrictions that existed under the Guidelines. This is unfortunate since the amendments alone are difficult to understand and when taken with the other features of the Guidelines create uncertainty as to the nature and extent of certain obligations and restrictions.

43. During the latter part of September, **Intercorp**, retained **Damaza** to prepare and provide two reports for the assistance of two of **Intercorp's** clients, other than **Wyda.** These reports were prepared and submitted by **Damaza** before the **end of October, 1985** and **Damaza** billed **Intercorp** $2,500.00 which was eventually paid.

44. As part of its assessment of **Wyda's** application for investment, certain of **IDEA's** senior personnel met **Dobzinski** at **Wyda's** offices on **October 3, 1985.** Although the meeting was lengthy and **Wilfred Caplan** was at **Wyda's** offices during this time, there was no contact between him and the **IDEA** personnel.

45. A further meeting held at the **IDEA** offices on **October 9, 1985,** was attended this time by more senior **IDEA** personnel including **Logan.** The **IDEA** people expected that **Wilfred Caplan** would be attending that meeting with **Dobzinski.** However, on his arrival **Dobzinski** explained that **Caplan** would not be attending because of his association with **Elinor Caplan** and her position in the Cabinet. This arrangement is consistent with the arrangement struck between **Wilfred Caplan** and **Dobzinski** that the former would not assume any front-line duties vis-a-vis **IDEA** or any provincial source of funding.

46. **Wyda's** position with respect to **Wilfred Caplan** and his association with the government sufficiently impressed **Logan** that on **October 16th** he prepared, complete with spelling errors, a memorandum (**IDEA** Exhibit "5") to **Blakley** and **Cannon** wherein he stated:

> "After our experience with the **Cumberland Group** I thought you guys might be interested in knowing how **Wyda** plays its political connections. The Vice-President of Finance and Administration of **Wyda** is a fellow by the name of **Wilfred Caplin** who happens to be the husband of **Eleanor Caplin,** not only a full Cabinet Minister in the **Peterson** Government but also Secretary of the Cabinet.
>
> In a meeting late last week with **Abraham Dobzinski** the President of **Wyda,** a meeting which we thought **Caplin** would attend, he made it clear that **Caplin** would have

> absolutely nothing to do with any of the meetings or negotiations that **IDEA Corporation** might have with **Wyda.** He went on to explain that should we ever need some information that **Caplin** could provide, we should speak to him but that would be the extent of our interaction with him." (emphasis added)

Logan testified that the memorandum was intended to draw a contrast between **Wyda's** style and the more aggressive, direct political approach that the **Cumberland Group** apparently employed during its application to **IDEA** for syndicate financing, an application which was eventually turned down in **October or November, 1985.**

The memorandum, however, clearly establishes the awareness on the part of **IDEA** personnel of **Wilfred Caplan's** association with government by **early October, 1985 and** the understanding that **Wilfred Caplan** would have no direct involvement in discussions or negotiations leading to any decision by **IDEA** to invest in **Wyda.**

47. Throughout the period **October, 1985** to the **end of January, 1986 Logan** and **Dobzinski** conducted to-and-fro discussions on the extent of **IDEA's** investment and the percentage of equity that **IDEA** would require in return. Whereas in **mid-October and early January IDEA** was prepared to invest 2 million of the 6 million dollars required by **Wyda** in return for approximately a 25 percent equity interest, by letter to **Dobzinski** dated **January 27, 1986** (IDEA Exhibit "8") **Logan** advises that **IDEA** is prepared "to recommend to its own Board of Directors that **IDEA** invest up to 1 million in the equity capital of **Wyda**", for an unnamed percentage.

48. As at the **end of December, 1985 Wilfred Caplan** had no direct contact with any **IDEA** personnel. His function until that point had been to prepare certain aspects of **Wyda** business plans and financial projections which were provided to **IDEA** to assist in its assessement of **Wyda's** application.

49. On **October 31st, 1985** the Treasurer of Ontario, the **Honourable Robert Nixon**, announced in his Budget that the government would embark upon a review of Schedule II Crown corporations, including **IDEA**, for the purpose of deciding whether they should be continued. This review was undertaken by **Kruger** and his staff. Throughout the fall of **1985** and **January, 1986 Kruger** and his staff met on a number of occasions with senior **IDEA** personnel, including **Blakley** and **Logan**. There is no evidence that **Wyda** was discussed at any of these meetings.

50. Throughout the period **October to the end of December, 1985, Wilfred Caplan** and certain members of **Elinor Caplan's** staff prepared, on her behalf, the required disclosure forms to be filed under the 1985 Guidelines. The Committee reviewed a series of communications between **Wright** and **Elinor Caplan's** office, including certain draft and final disclosure forms (Exhibit "H", p.3,4,5,9,13). These documents were found to be in compliance with the 1985 Guidelines, at least insofar as disclosure requirements are concerned. In fact, the **Caplans** were diligent in filing an amended form early in 1986 after **Wilfred Caplan** had acquired an interest in the equity of **Taurus**.

51. The **January 1, 1986** through **February 12, 1986** period represents the critical phase of the discussions and negotiations between **IDEA** and **Wyda**. By **January 6th, 1986 IDEA** had concluded that **Wyda** was likely to develop its unique CAD/CAM product prior to any of the competition, that the market risks associated with such a product were formidable and that marketing plans submitted by **IDEA** up to that time were in **IDEA's** opinion "very optimistic" (**IDEA** Exhibit "7"). Accordingly, to assist it in forumulating its final decision on an investment recommendation to its Board of Directors, **IDEA** sought, early in **January**, certain detailed and complex financial analyses and forecasts.

52. Upon receiving **IDEA's** requests for this financial information, **Dobzinski** realized that he could no longer conduct discussions and negotiations with **Wyda** without the direct involvement of **Wilfred Caplan.** Concerned about the rumored wind-up of the **IDEA Corporation** and mindful of **Logan's** target date of the **February 19th IDEA** Board of Directors meeting for any recommended investment, he implored **Wilfred Caplan** to become directly involved. He and **Dobzinski** apparently believed that if he, **Wilfred Caplan,** did not have direct dealings with **IDEA** personnel respecting the information that had been requested, then no proposal for any investment by **IDEA** in **Wyda** could be ready for the **February 19th** Board of Directors meeting. If the Directors did not consider an investment in **Wyda** on **February the 19th, Dobzinski** and **Caplan** were concerned that **IDEA** would be wound up before any final decision could be made. The investment would therefore be lost.

Wilfred Caplan concluded that if he did not accede to **Dobzinski's** request, he would be putting his client's financial future in jeopardy. In other words, he had a duty to **Wyda.** Accordingly, he agreed to have direct contact with **IDEA** personnel concerning the financial proposals and projections requested, on a clear understanding that there would be no political interferences, suggestions, discussions or innuendoes at any meeting that he had with **IDEA** staff.It is obvious **Wilfred Caplan** was concerned that if he did not serve what he perceived to be his client's best interests in this way, he might well have been at risk, either professionally, legally or both.

It is clear that before reaching that decision **Wilfred Caplan** did consider the implications under the 1985 Guidelines. While he apparently concluded that no such conflict would exist, notwithstanding the previous advice given to him by **Eberts** and **Wright,** and his attempt to withdraw from the retainer altogether, he did not seek any advice from **Wright, Eberts** or anyone else on the implications of this more direct and extensive involvement.

53. **Wilfred Caplan** met with **IDEA** personnel on at least two occasions in **January, 1986.** During both of the meetings certain financial analyses and projections were discussed, all of which were critical to **IDEA** in formulating its final decision to recommend an investment to its Board of Directors.

54. On **January 27th, 1985 Logan** wrote to **Dobzinski** (**IDEA** Exhibit "8") in formal terms confirming **IDEA's** position to invest only 1 million dollars in the equity capital of **Wyda** on the condition that **Wyda** and other venture capitalists fund the 5 million dollar balance required. Thereupon began some rather intense negotiations between the parties leading up to **IDEA's** decision to recommend the 3 million dollar investment, in two stages, to its Board of Directors. **Logan** had decided, for his own purposes, as early as **mid-January, 1986** that **IDEA** should invest in **Wyda.** However, the amount of the investment and the extent of the equity participation remained to be finalized.

55. **Damaza** and **Wyda** formalized the terms of the retainer for financial and administrative services by letter of **January 31st, 1986** (Exhibit "I), p.5-6). No reasonable explanation was given for the delay in the preparation of this document even though the retainer had existed for over two months. This retainer did not replace the one which existed in **July and August of 1985** pursuant to discussions between **Wilfred Caplan** and **Dobzinski** after receiving advice from **Wright** and **Eberts.** Rather, in **October, 1985,** at **Dobzinski's** insistance, the retainer was changed to a flat 8% of any financing obtained, exclusive of any provincial government sources, plus $2,000.00 per month in full satisfaction of all expenses and disbursements. This retainer lasted approximately one month and was then replaced by the terms as set forth in the **January 31st** letter.

56. The **January 31, 1986** retainer provided that **Damaza** would "assist and advise **Wyda** in obtaining second-round financing" for the sum of two thousand dollars per month, inclusive of all time and disbursements incurred. Upon the arrangement of second-round financing the following payments would be received:

> "1. $50,000.00 immediately upon closing.
>
> 2. an additional $50,000.00 upon the closing of a limited partnership where the limited partners are individuals, where the limited partnership was organized and marketed by **Damaza's** contacts.
>
> 3. 5% of **Wyda** or **Wyda**-related profits before taxes in 1987 and 1988 up to a maximum of $600,000.00, of which a maximum of $200,000.00 is payable at the end of 1987. This would exclude the profits on research and development contracts which are part of the second-round financing."

Second-round financing is defined by the agreement to mean "funds raised by sale of equities, borrowings or the entering into of research and development contracts", but specifically excluded "any dealings with Ontario government ministries or agencies, after **November 1, 1985** and prior to **June 30, 1987**".

This latter exclusion was provided as a direct response to the advice received from **Eberts** and **Wright** and the concerns raised in terms of the consequences of a contingency payment vis-a-vis the 1985 Guidelines. Although no explanation was given to the Committee for the exclusion applying to the period **November 1, 1985** to **June 30, 1987**, it was clear that everyone concerned assumed that **IDEA's** funding of **Wyda** was excluded from the contingency portion of the retainer.

57. **Elinor Caplan** first became aware of this letter agreement in **late February or early March, 1986** and she personally reviewed the letter in **early April**. She concluded upon her review, and particularly the clause excluding payment on any

provincially funded second-round financing, that it complied with the 1985 Guidelines. However, she was then unaware of the nature and extent of her husband's association with **Wyda,** the degree to which he had been and continued to be involved in negotiations with **IDEA** and the fact that such involvement was contrary to the advice received from **Eberts.**

58. **February 12th, 1986** was a critical day in the process leading to the actual investment by **IDEA** of 3 million dollars in **Wyda.** Early in the day **Logan** and **Cannon,** on **IDEA's** behalf, met with **Dobzinski** and **Wilfred Caplan,** on **Wyda's** behalf, at the offices of **IDEA.** The purpose of the meeting was to finalize the essential terms of the investment and most critically the pricing issue on the equity component - how much **IDEA** was going to pay for how much of **Wyda.**

The evidence clearly establishes that intense negotiations were undertaken by those in attendance at that meeting. Whereas the witnesses' recollection of **Wilfred Caplan's** involvement was that of an advisor to **Dobzinski,** who apparently conducted the direct negotiations, the Committee nevertheless concludes that **Wilfred Caplan** did perform the role of a negotiater. Clearly **Dobzinski** would not have been able to represent **Wyda's** interests at that meeting without **Caplan's** direct presence and involvement. In any event, noting the issues at hand and the timing of the meeting in relation to the **February 19th** Board of Directors meeting, the Committee concludes it would have been impossible for **Wilfred Caplan** not to have been part of the negotiations in some direct way. The Committee notes the evidence of **Ian MacDonald,** then Chairman of IDEA, when describing **Wilfred Caplan's** involvement was that:

> "During this review and series of discussions, **IDEA's** staff met with **Mr. Dobzinski,** the President of **Wyda,** and **Mr. Caplan,** the Vice-President, Finance of **Wyda.** <u>These discussions and subsequent negotiations</u> pertained to the financial aspects of

> the proposal and consisted of several telephone calls and meetings in **late January** and **early February, 1986.**" (emphasis added).

59. Immediately after the meeting with **Dobzinski** and **Wilfred Caplan, IDEA** personnel finalized their venture summary (**IDEA** Exhibit "9") recommending the investment in **Wyda** which was then intended to be presented to the Board of Directors at the **February 19th** meeting. The final terms of the investment as negotiated between the parties at the meeting earlier that day were incorporated into the venture summary and ultimately presented to the Board of Directors at its **March 6th, 1986** meeting.

In the venture summary, **Wyda** is described as

> "one of the most exciting proposals ever presented to **IDEA Corporation. Wyda** is developing a CAD/CAM software system based on a totally different concept than any system currently on the market. If **Wyda** can complete this product and come even close to the specifications they have established, it will be a true technological breakthrough and a quantum leap ahead of any known competition."

The venture summary highlights the total financing required for **Wyda,** (6 million dollars; **IDEA's** participation to total 3 million dollars in two stages), a general description of the technology of the Product, a brief review of background information on Wyda (particularly that relating to prior revenue sources), the management of **Wyda** (including a description of **Wilfred Caplan** as Vice-President, Finance), and a relatively detailed assessment of market strength and weaknesses. After considering both the positive and negative aspects of the investment, the summary recommends an immediate investment of 1.6 million dollars in return for 17.5 percent of the common shares and an option to invest a further 1.4 million dollars within one year of the initial investment for an additional 9 percent of the common equity.

The venture summary, together with the technology and market assessments by the **Ontario CAD/CAM Centre** and the **North American CAD/CAM** expert were presented to the Board of Directors on **March 6th, 1986.** An overhead slide presentation (**IDEA** Exhibit "10") highlighted certain features of the investment proposal.

60. The agenda of the Board of Directors meeting of **February 19th, 1986** (Exhibit "L-10") was hastily changed on the morning of the **19th** because of the Cabinet decision to wind down **IDEA** by **June 30th, 1986** and because of a request by **Kruger** to attend and address the Board meeting that day. **Wyda** does not appear to have been discussed at all at the **February 19th** meeting, although it is clear that **IDEA's** Board Chairman, **MacDonald,** was aware of the details of the venture summary and of **Logan's** recommendation prior to that date.

61. The terms of investment set forth in the **February 12th** venture summary were altered slightly by **Logan** in his letter to **Dobzinski** of **March 3rd, 1986** (**IDEA** Exhibit "12"), wherein he formally describes the proposed investment as follows:

(a) **IDEA would** invest 1.7 million dollars in return for 18 percent of the common shares of Wyda immediately;

(b) **IDEA** would obtain an option to invest an additional 1.3 million dollars to increase its holdings from 18 to 27 percent of the common shares of **Wyda,** such option to continue for a period of one year; and

(c) **IDEA** would grant **Wyda** the opportunity to redeem up to 60 percent of the common shares held by **IDEA** for a period of four years on certain terms.

62. On March 5, 1986, **Wright** advised **Wilfred Caplan** that the 1985 Guidelines could be read so as to permit, the company in which he had acquired an interest, **Taurus**, to apply for and obtain an **ODC** grant. This is something which, in substance, is no different from an **IDEA** investment. In fact, **Wilfred Caplan** confirmed to the Commitee that he interpreted the advice as permitting an **IDEA** investment in **Wyda** even if he had held a share interest.

63. At the **IDEA** Board of Directors meeting of **March 6, 1986 Logan**, who presented the proposal on behalf of **IDEA**, disclosed to the Board members that **Wilfred Caplan** was the husband of **Elinor Caplan**, a member of the Cabinet and Chairman of Management Board. **Chairman MacDonald** at that point invited any comments from Board members concerning **Caplan's** involvement. Apparently the Board decided to proceed with the proposal and to treat the recommendations in the venture summary as they had and would any other project. The Board unanimously decided to invest in **Wyda** on the terms set forth in the venture summary and as amended by **Logan's** letter to **Dobzinski** of **March 3rd, 1986.**

64. The nature and extent of **Wyda's** long-term debt does not appear to have been a major consideration affecting **IDEA's** decision to invest or how the investment would be implemented. However, it became apparent after the **March 6th** Directors' decision that **Wyda's** financial position was critical. On **March 17th, 1986 Wilfred Caplan** telephoned **Logan** and requested a partial investment payment in advance of closing in the amount of $100,000.00 (**IDEA** Exhibit "15"). Cash-flow problems were cited as the reason for this request and the evidence discloses that **Wyda** was in serious danger of missing a payroll. **Logan** advised **Wilfred Caplan** of **IDEA's** refusal to accede to this request on **March 19th, 1986.**

65. As the discussions between the parties proceeded towards the closing of the transaction, **IDEA** became increasingly concerned about the nature and extent of two substantial long-term debts of **Wyda**, notably to **Budgrove** and **Grancom**, both for the purchase of certain computer work stations critical to the development of **Wyda's** CAD/CAM product. In that regard, **Logan** held a series of meetings with **Dobzinski** on **April 8th, 9th and 10th, 1986** to resolve the long-term debt situation. At the meeting of **April 10th**, which was attended by **Wilfred Caplan**, the conditions upon which **IDEA** would invest the 3 million dollars were finalized. Also around this time the decision by **IDEA** to exercise its option immediately for the additional 9 percent of the equity in **Wyda** was made.

By the terms of this new arrangement, **IDEA** would invest 3 million dollars immediately in return for 27 percent of the equity, such funds to be advanced only upon receipt of satisfactory documentation from **Wyda** that **Dobzinski** and members of his family had retired the debt owing to Grancom, had retired the debt owing to **Budgrove** from **May 1st, 1986** forward, and had paid accumulated interest on any overdue payments owing to **Budgrove** up to **April 30th, 1986.**

IDEA's 3 million dollars would be used partially to retire the principal amount owing to **Budgrove** as of **April 30th, 1986** and retire other specified indebtedness, including a shareholders loan of approximately $500,000.00 owing to **Dobzinski** and $200,000.00 owing to the **Cumberland Group**, the latter of which the Committee understands remains in dispute. It is clear from the evidence that while **IDEA** personnel did not believe that the substance of the investment was altered by the introduction of the long-term debt factor, nevertheless the specific use of a significant portion of **IDEA's** 3 million dollars was directed in a way not previously contemplated.

IDEA personnel continue to maintain that the investment is still a "good deal" because fundamentally they believe that the CAD/CAM product is unique and will be able to capture a significant portion of a billion dollar world-wide market. However, the benefit to **Wyda**, which **IDEA** originally forecasted the investment would create, has most certainly changed.

66. The **IDEA** Directors' decision to invest in **Wyda** was communicated to **Kruger** shortly after the **March 6th** meeting. When he learned of **Wilfred Caplan's** association with **Wyda,** he made certain inquiries to determine whether any political influence or pressure had been involved in the decision. Between **March 21st and April 7th, 1986** he had discussions with **MacDonald, Blakley** and **John Webster** of **Elinor Caplan's** office, was informed and so concluded that no conflict of interest existed.

However, **Kruger** was emphatic that at no time during these discussions was he aware of the name of the company, **Wyda.** He certainly was not aware of the nature and extent of **Wilfred Caplan's** association with **Wyda** or his involvement with **IDEA.** In fact, his notes of these discussions (Exhibit "P-2") record that he was informed that "**Wilf Caplan** not involved in any negotiations with Board (**Logan** said)". This is clearly contrary to the evidence heard by this Committee.

67. On **April 7th,** and **April 21st, 1986, Intercorp** submitted accounts for work done and services rendered re: **IDEA** to **Wyda** in the amount of $30,000.00, representing 1 percent of the total **IDEA** investment. These accounts were sent after **Wilfred Caplan** had informed **Fleischmann** of the extent of the investment and the timing of the closing. These accounts were paid in full by cheque on **April 21st, 1986.**

It is clear from the evidence that no one at **IDEA** had any knowledge of the **Fleischmann-Intercorp** involvement with, or the arrangement for, fees based on the **IDEA** investment before the

transaction was closed. Although **IDEA** appears not to have had any express policy against finder's fees on any investments made by it, it is clear to the Committee that **IDEA** would at least have seriously questioned this payment. In hindsight, of course, **IDEA** personnel maintain that prior knowledge of this arrangement would not have affected its decision to invest nor the terms of payment. The Committee notes, however, that with the exception of **Fleischmann**, the witnesses were unanimous in their assessment that **Intercorp** did nothing to warrant the fee and that, according to **Blakley**, **IDEA** was structured in such a way that no prospective investee required the services of a company like **Intercorp** to process an application for investment successfully.

68. Throughout **April, 1986 Blakley**, knowing that **IDEA** would be wound-up by **June 30th, 1986** and because of the uncertainty as to the disposition of **IDEA's** investment portfolio, "lobbied" a number of persons including **Kruger**, **Fleischmann** and others close to the provincial government in an effort to persuade them that he should be given the responsibility in some form or structure to manage the **IDEA** portfolio on behalf of the province. His efforts appeared to have been unsuccessful.

It is significant that **Blakley's** reasons for approaching **Fleischmann** were that he believed **Fleischmann** was a person close to the government who could assist him in his efforts. The Committee did not hear any evidence that **Fleischmann**, beyond one or two telephone calls, made any real efforts in this regard.

69. On **April 11th, 1986 Wilfred Caplan** executed an acknowledgement (**IDEA** Exhibit "16") in respect of the **January 31st, 1986** retainer agreement which was required by **IDEA** on the closing of the transaction. By this acknowledgement **Caplan** confirms that "no amount whatsoever is payable by **Wyda** to **Damaza** in respect of the financing to be provided by the company by **IDEA** as contemplated by the commitment letter". In other words, **IDEA**

wished to be satisfied that no money was payable on the closing of the transaction pursuant to the **January 31st, 1986** retainer other than the $2,000.00 monthly.

70. Due to practical difficulties, certain of the closing documentation was executed prior to the actual closing on **April 18th, 1986.** Specifically, the subscription agreement (**IDEA** Exhibit "17") setting out the terms of the financing between **IDEA** and **Wyda** and certain other terms applicable to **Dobzinski** was executed at the offices of **IDEA's** legal counsel on **April 12th, 1986.** After the closing documents were executed that day, **Dobzinski**, a member of his family and **Wilfred Caplan** had lunch wherein **Caplan** disclosed for the first time that he intended to leave **Wyda** and devote all of his energies to **Taurus**, in which he had acquired an interest at the **end of February, 1986.**

Dobzinski immediately asked **Caplan** to reconsider as he did not want to lose his services or be adversely affected in efforts to obtain third round financing. **Caplan** agreed to remain with **Wyda** for a period of three months on a month-to-month basis, the continuation of which was to be reviewed at the end of each month. They further agreed that the terms of the **January 31st, 1986** retainer would not continue and would be replaced by an $8,000.00 per month flat-fee retainer.

71. At first opportunity, on **April 14, 1986, Caplan** prepared and forwarded to **Dobzinski** a letter (Exhibit "I", p.13) from **Damaza** confirming the terms of the new retainer as follows:

> "Further to your engagement letter of **January 31, 1986,** this is to advise you that **Damaza's** retainer fee will be $8,000.00 per month commencing **April 17, 1986.**
>
> We shall be pleased to continue to provide our consulting services to **Wyda** if you wish us to do so."

The Committee heard no evidence that this change would have occurred regardless of whether **IDEA** had invested in **Wyda.**

This letter and the change in the retainer fee to $8,000.00 per month was not disclosed to **IDEA** prior to closing of the transaction. The Committee accepts the evidence of **IDEA's** legal counsel that the letter represents a change to one of the material contracts of **Wyda** and that disclosure of same should have been made. However, **IDEA** personnel did indicate to the Committee that, in hindsight, the disclosure, if made, would not have reversed **IDEA's** decision to invest.

72. **Elinor Caplan** was unaware of the change to the retainer and the **April 14th, 1986** retainer letter until **June 10th, 1986** when she discussed both with her husband.

73. To implement the paydown of the long-term debts to **Budgrove** and **Grancom**, **Dobzinski** issued a certified cheque to **Wyda** on **April 14th, 1986** in the amount of $3,451,922.00.

On the **15th of April, 1986 Dobzinski** obtained from each of **Budgrove** and **Grancom** an acknowledgement that a portion of the long-term indebtedness had been paid in full by **Dobzinski** himself. In return for such payment, **Grancom** and **Budgrove** each assigned their respective indebtedness to **Dobzinski**.

74. On **April 17th, 1986 Wyda** issued a cheque to **Dobzinski** in the same amount of $3,451,922.00, presumably to reimburse him for the monies paid to retire the long-term indebtedness. The Committee has not received an explanation that would justify the complexity of, or reconcile the accounting for, these transactions.

On **April 18th, 1986 IDEA**, presumably satisfied that the pre-conditions referable to the long-term debt had been satisfied, closed the transaction whereupon in return for 3 million dollars **IDEA** was issued 270,000 Class "B" special shares of **Wyda** equivalent to 27 percent of its equity. The transaction was formalized by the necessary and usual subscription, shareholders

and other related agreements and such other documentation required by **IDEA** to ensure that **Wyda** could remain competitive vis-a-vis its product and that no technological details would be disclosed by key personnel.

75. On **April 17th, 1986 Damaza** invoiced **Wyda** $8,000.00 for services rendered between **April 17th and May 16th, 1986** (Exhibit "I", p.15) which invoice was paid by **Wyda** on the same date. Between the **19th of April and the 30th of April, 1986 Wyda** paid sums including the following:

(a) $462,525.98 to **Dobzinski** to reimburse for funds apparently loaned to **Wyda** between **November, 1985** and **April, 1986** together with moving expenses and other disbursements incurred;

(b) $30,000.00 to **Intercorp** as previously described;

(c) $8,000.00 to **Damaza** as previously described; and

(d) $584,670.00 to **Budgrove** representing principal amounts owing to the end of **April, 1986** as per the agreement struck with **IDEA** personnel on **April 10th.** (Exhibit "L-14")

76. **Wilfred Caplan** appears to have first informed his wife of **Wyda's** successful efforts and his decision to leave **Wyda** in favour of **Taurus** around the **end of April, 1986.**

In fact, **Elinor Caplan** does not appear to have had any prior knowledge of **IDEA's** decision to recommend an investment to its Board of Directors. The Committee accepts her evidence that she did not have any discussions with anybody connected with **IDEA** or the government concerning **Wyda's** application.

77. On **May 16th, 1986 Damaza** invoiced **Wyda** for $8,000.00 for services rendered from **May 18th to June 16th, 1986** (Exhibit "I", p.16) and was paid by cheque that same day.

78. Sometime in the latter part of **May or early June, 1986 Wilfred Caplan** informed **Dobzinski** that that would be the last month he would continue with **Wyda.** They agreed, however, that **Caplan** would continue to provide services at a rate of $150.00 an hour. This arrangement was to commence on **June 17th, 1986.**

79. The matter of the alleged conflict of interest regarding **Elinor Caplan** was first raised in the Legislature on **June 10th, 1986.** After question period, **Elinor Caplan** advised the **Premier** that there had been no influence on **IDEA** since she had had no contact with it, that her husband had received no benefit as he did not receive any contingency payment pursuant to the **January 31st, 1986** retainer and that her husband was no longer at **Wyda.**

However, in a subsequent discussion with her husband that evening, she learned for the first time that he was still associated with **Wyda** but that he would be leaving by **June 16th, 1986.** He did not, however, inform her of the arrangement for subsequent services at the rate of $150.00 per hour. Although **Elinor Caplan** was told by her husband that his then current retainer rate was $8,000.00 per month, she did not recognize the significance of the $2,000.00 per month previously paid pursuant to the **January 31st** agreement.

Although she intended to inform the Premier of her husband's continued association with **Wyda** and so instructed certain members of her staff to that effect, it appears that the Premier was apparently not informed of this fact until later and after certain newspaper articles were published.

80. After question period on **June 10, 1986,** the Premier instructed **Carman** to assemble a group to review the circumstances of **Wilfred Caplan's** association with **Wyda** and the **IDEA** investment so that he could report to the House at the earliest opportunity and particularly by the afternoon of **June 11th, 1986.**

Carman's team consisting of **Messrs. Kruger, Wright, McKinnon, and Lavalle** reviewed certain documentation available through the offices of **IDEA** and the **Ontario Development Corporation ("ODC")** and had discussions with a number of individuals, including representatives of **Elinor Caplan's** staff and representatives of **IDEA.** They also provided the Premier with a statement of their findings which he read to the House on **June 11th, 1986.**

81. That statement concluded that from the evidence available to the team, together with the opinion of **Wright**, the **Caplans** were not in breach of the 1985 Guidelines. In fairness, the investigation was done in a very short period of time without the benefit of access to all of the documentation or witnesses that have been available to this Committee. Particularly, the **Carman** team was not made aware of the full nature and extent of **Wilfred Caplan's** association with **Wyda** or the extent of his involvement in the negotiations leading to the **IDEA** decision to invest. They were not aware that he was designated Vice-President of Finance, that the retainer had been changed from $2,000.00 to $8,000.00 per month concurrent upon the closing of the transaction, or of the advice that he had received from **Eberts** by her letter of **July 8th, 1985** and the response to that advice as recorded by **Wildred Caplan's August 6th, 1985** letter to his wife.

82. On **June 12th, 1986** it was disclosed in the Legislature for the first time that **Wilfred Caplan** was designated as Vice-President of Finance of **Wyda.** It was also disclosed that day by a newspaper article published in one of the Toronto daily

newspapers that **Wilfred Caplan's** retainer had, in fact, been changed from $2,000.00 per month to $8,000.00 per month concurrent with the financing closing.

83. On **June 13th, 1986** the **Caplans** met with the Premier to review the circumstances surrounding **Wilfred Caplan's** association with **Wyda.** During that meeting the Premier suggested to **Wilfred Caplan** that he terminate his relationship with **Wyda** a suggestion to which he readily agreed. There was no discussion of a resignation on the part of **Mrs. Caplan,** although as of that date she had virtually decided to resign unless her explanation of events was accepted by opposition members.

84. Over the weekend of **June 14 and 15, Elinor Caplan** confirmed her decision to resign and disclosed this to her children. She did not inform her husband of her decision at that time.

85. **Elinor Caplan's** statement to the House on **June 16th** (Exhibit "F"), clarified any confusion or misunderstanding that she may have caused previously. Her explanation was not readily accepted by the opposition parties and she thereupon resigned.

86. On **June 18th, 1986** the **IDEA** Board of Directors again considered **Wyda.** They agreed to invest a further $500,000 in two stages, subject to **Wyda** meeting certain developmental criteria with regard to the Product. This transaction has not yet been completed.

C. COMMITTEE ISSUES WITH FINDINGS AND RECOMMENDATIONS

1. What is the meaning and scope of the Guidelines with respect to Conflict of Interest dated September, 1985.

Presently,there are no less than five proceedings under way, including this Committee's inquiry, which are reviewing some aspects of the 1985 Guidelines. Some, such as this Committee and the Legislative Assembly Committee dealing with the allegations of conflict of interest involving René Fontaine, will focus upon particular aspects of the 1985 Guidelines. Others, including the **Blake, Cassels** report and the study by the **Honourable John Black Aird**, will entail a more general review. In either event it is possible that inconsistent opinions will be expressed on the meaning and scope of the 1985 Guidelines. That may be inevitable and, in some ways, as will be apparent from the following, quite understandable.

THE COMMITTEE IS PROFOUNDLY CONCERNED THAT NO ONE INTERPRETATION OF THE 1985 GUIDELINES TAKE PRECEDENCE OVER ANOTHER. RATHER, WHAT IS REQUIRED AFTER ALL OF THE OPINIONS HAVE BEEN EXPRESSED, IS A MECHANISM WHEREBY ALL OF THE OPINIONS GIVEN CAN BE CONSIDERED SO THAT APPROPRIATE ADVICE AND RECOMMENDATIONS CAN BE MADE ON THE FUTURE OF THE 1985 GUIDELINES. THE COMMITTEE RECOMMENDS THAT THE PREMIER CREATE A SPECIAL COMMITTEE OF THE LEGISLATURE TO PERFORM THIS FUNCTION.(1)

The following is not intended to be exhaustive or to necessarily have application to all circumstances relevant to the restrictions and obligations contained in the 1985 Guidelines. Rather, it is an opinion required to make findings in respect of the evidence heard concerning the allegations of conflict of interest which have been made against the **Caplans.**

The **September, 1985** Guidelines, with three exceptions, are identical to the 1972 Guidelines. They are structured in essentially three parts:

(a) A definition section which defines the key terms of family and land. In the former, a spouse and minor children of a Minister are included. It is clear that the restrictions and obligations imposed on Ministers with respect to disclosures and compliance apply equally to spouses and minor children;

(b) Disclosure requirements on Ministers taking office in the form of public filings of:

(i) land owned in Ontario, except that occupied for private residential or recreational use;

(ii) share or debt interest in private companies and land; and

(iii) partnership or proprietorships in which the Ministers are principals;

(c) However the majority of the guidelines consist of a delineation of certain obligations and restrictions imposed upon Ministers of the Crown.

Most relevant to the Committee's terms of reference are the following provisions:

(a) "No private company in which a Minister or his or her family have an interest may become contractually involved with the Government of Ontario unless the interest of the Minister or family has been placed in a 'blind trust' set up in accordance with these guidelines." (The "private company - contractually involved provision")

(b) "The rule against contracts with the government does not preclude Ministers from entering into any contract with the government which is provided for by legislation or regulation and which, by the terms of the legislation or regulation, is available evenhandedly to all members of the public (i.e. OHIP) or to a specific class of members of the public (i.e. crop insurance)." (The "exception clause") and

(c) "These guidelines are not exhaustive, nor could they, in reality, embrace all possible situations representing or suggesting a conflict of interest." (The "basket clause")

To fulfill its mandate regarding the conflict of interest allegations this Committee need only express an opinion on these three provisions. The more general, comprehensive opinion should result from an exhaustive review and analysis of the work currently being undertaken by this Committee and others.

Before any opinion is expressed on the 1985 Guidelines, it is necessary to identify their purpose. They are not rules of law and should not be interpreted strictly in a judicial or legalistic manner. Rather, the Committee adopts the comments of the Premier made in the Legislature on July 2nd last when he stated:

> "Government faces no issue more complex than the question of how it can ensure that its actions and decisions are based solely and clearly on the basis of the public interest, with no reasonable suggestion of a conflict in that interest.
>
> This is not a new question, nor one that is unique to Ontario. Indeed, it has been raised frequently in every democratic jurisdiction.
>
> I am sure that all parties, in every jurisdiction, would agree on the need to guarantee that nothing detract from the basis public trust that is central to democracy.
>
> At the same time, our Regulations and Guidelines must be drawn so as to encourage the widest degree of participation." (Emphasis added.)

Further on **July the 9th, 1986** the Premier testified before this Committee that:

> "A lot of businesses are involved with government in some way or other in the normal course of events, and the genius in drawing these guidelines is to protect the public interest. That's the number one concern: protect the public interest and prevent individuals in the Cabinet or anyone else from making decisions where they put their private interest ahead of the public interest;". (emphasis added)

In other words, the Guidelines are intended to create a balance between the need to impose restrictions and obligations on Ministers of the Crown so as not to detract from the "basic public trust" and the need to encourage people from every sector in society to become involved in government. The Committee accepts the premise that any guidelines, and particularly the 1985 Guidelines, should be interpreted so as not to "scare away" good people from government. However, that concern must be held secondary to the fundamental need to preserve the public trust.

In any event, there is no evidence that anyone has been scared away from the current government or the current political process by the 1972 or the 1985 Guidelines. Therefore, in many respects, that issue is a distraction. Neither **Elinor** nor **Wilfred Caplan** have ever indicated that the Guidelines were so onerous as to cause them to rethink the commitment they have made to the public service.

(a) **The "private company" - contractually involved provision.**

The two fundamental issues which must be defined to give a full interpretation to this clause are "interest" and "contractually involved with the government of Ontario".

The "blind trust" provision is irrelevant for the purpose of the Committee's work with one exception. The scope of the term "interest" as found in this clause has not, in the Committee's opinion, been restricted by the introduction of the blind trust provision available to a private Ontario company in which a Minister, etc. has an interest. To do so would be to unduly restrict the scope of interest to the effect that the public trust in government would be seriously affected. If a Minister's interest is caught by the 1985 Guidelines but is not capable of being placed in a blind trust, then clearly the Minister must take the necessary steps to comply with them in another manner.

(i) Interest

The evidence disclosed a fairly wide range of interpretations of this term. On the one hand, **Wright** prefers an interpretation which is quite limited in scope, and includes perhaps nothing more than proprietary interests such as shareholdings, mortgages, leaseholds and the like.

Eberts offered a wider interpretation. Although she declined to give the term full scope and effect, she would include in her definition of interest beneficial, contingent and proprietary interests. Significantly, she declined to limit the definition to a restrictive dictionary meaning. In her testimony before the Committee she stated that:

> "the phrase is a general one and, again, I do not have a lexicon of every possible thing that is in there. What I would tend to do is assess each individual circumstance by saying, 'is this the sort of ownership, near ownership or related interest that comes within the guidelines?'". (emphasis added)

In other words, the definition of interest must be assessed according to the circumstances of each particular case.

While the Committee agrees that interest should not be defined exclusively by what the courts have said or by dictionary definitions, it is nevertheless useful to survey those areas.

In the Black's Law Dictionary, 5th edition, it is defined as: -

> "the most general term that can be employed to denote a right, claim, title, or legal share in something. In its application to lands or things real, it is frequently used in connection with the terms 'estate', 'right', and 'title'. More particularly it means a right to have the advantage accruing from anything; any right in the nature of property, but less than title.
>
> The word 'interest' is used throughout the Restatement of Torts, 2d, to denote the object of any human desire. Sec. 1"

The Oxford Companion to Law defines it to include:

> "the connection a person has with a thing entitling him to make a claim in respect thereof".

The Canadian Law Dictionary defines it to include:

> "In legal practice, the term connotes concern for the advantage or disadvantage of a party to the cause of action."

Murray's New English Dictionary, Volume 5, defines it to include:

> "The relation of being objectively concerned in something, by having a right or title to, a claim upon, or a share in. ...
> Participation or share in doing something or the production of some result. ...
> The relation of being concerned or affected in respect of advantage or detriment; esp. an advantageous relation of this kind. ...
> That which is to or for the advantage of anyone; good, benefit, profit, advantage."

In the American Corpus Juris Secondum, Volume 67, in discussing individual or personal interest in transactions, the authors note that:

> "It has been held, however, that the public officer's interest need not be a financial one, nor need it be a direct interest, in order to effect disqualification. Also, it is not necessary to show actual fraud, dishonesty, or loss to invalidate the transaction, and it is immaterial whether the officer was in fact influenced.
>
> Whether a particular interest is sufficient to disqualify is a factual question, depending on the circumstances of the particular case, and the question is always whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from the sworn public duty. The public officer's personal advantage, pecuniary or otherwise, is one of the elements to be considered in determining whether a conflict of interest situation exists, but it is not the only test, and the officer's good faith is not of controlling importance. Various other relevant factors may be considered." (emphasis added)

Jowett's Dictionary of English Law, 2nd edition, defines interest to include:

> "a person is said to have an interest in a thing when he has rights, advantages, duties, liabilities, losses or the like, connected with it, whether present or future, ascertained or potential: provided that the connection, and in the case of potential rights and duties, the possibility, is not too remote. ...
>
> Interest also signifies, more especially, an advantageous or beneficial interest ...
>
> One person may have an interest in another independently of the question of property. Thus a husband has an interest in his wife

> (see Consortium), a guardian in his ward, a master in his servant, and so on." (emphasis added)

Our Ontario High Court has observed in trying to define the word interest that:

> "the word is a general one of fairly wide meaning. Without any qualification whatever it could, I think, be made to cover any enforceable legal right or claim."
>
> Re Beard, [1950] O.W.N. 421 per Wells, J. at page 423.

The Supreme Court of Canada in interpretating the phrase in the context of conflict of interest legislation included in the Charter of the City of Montreal, has stated:

> "the phrase 'interested in' has no technical signification; effect must be given to it according to the common usage of men."
>
> Angirgnon v. Bonner, [1935] S.C.R. 38 per Duff, C.J. at page 45

This decision is of particular assistance to this Committee. The Supreme Court held that an Alderman who had sold his property to his adult daughter for a sum still outstanding had an interest in the daughter's lease of the property to the City for a police station. This amounted to the Alderman having an interest in a contract with the City which violated the conflict of interest provisions of the Montreal Charter.

At page 43 of his decision, The Chief Justice states,

> "On further reflection, I have reached the conclusion that the existence of a common intention and expectation concerning the disposition of rents,...shows that the father was 'interested in the lease' within the purview of the statute." (emphasis added)

This decision has since been applied in the Supreme Court of Canada decision Re Wheeler (1979), 25 N.B.R. (2d) 209. In that case the court considered the removal of the Mayor of Moncton, New Brunswick from office on the grounds that he had an "interest" in certain contracts with companies of which he was an officer or director. Mr. Justice Estey held, at p. 218:

> "A director, and particularly one who is also a president, owes a continuous, day-to-day duty to the legal entity, the company, as well as to the shareholders, to prosecute the company's affairs in an efficient, profitable, and entirely lawful manner. ... such an officer is most certainly 'interested' in his company entering into profitable contracts." (emphasis added)

and further at p. 219 he states,

> "A director or officer of a construction company or of a service company must, in ordinary parlance and understanding, have an interest, albeit indirect, in the welfare of the company as it relates to or results from 'contracts'." (emphasis added)

The British Columbia Court of Appeal in the decision of Boss v. Broadmead Farms Ltd. et al. (1979), 16 B.C.L.R. 268 considered the issue of whether an alderman of the district of Saanich, who was also a lawyer in the legal firm that acted as municipal solicitor and who acted for a company that obtained a land use contract from the district, had an interest in such contract. Mr. Justice Hinkson, speaking for the Court stated, at p. 283:

> "Normally, an employee of a corporation would not be held to have an indirect interest in a contract between his employer and a municipality. But...in the present circumstances, rather than being an employee of a corporation, Mr. Paterson is really a legal administrator...carrying on his duties on behalf of that firm, upon a basis which supported a conclusion that he had an indirect interest in a contract between his employer and the municipality." (emphasis added)

A review of conflict of interest legislation in other provinces in Canada reveals that interest is not confined to those of a proprietory or beneficial nature. It is signficant that some of these statutes have been in force since the early 70's.

The Newfoundland legislation enacted in 1973, defines interest as:

> "without limitation of the generality of the word, the word 'interest' includes:
>
> (a) an interest in any partnership, including an interest in a law partnership;
>
> (b) any employment (other than employment as a Member, a Minister of the Crown or a public employee, as the case may be) for which remuneration is payable; and
>
> (c) any loan made by the Member or public employee to any such company, firm or body and any other indebtedness no matter how secured of such a company, firm or body to the Member or public employee". (emphasis added)

In the British Columbia Legislation, enacted 1979, interest is defined to include:

> "an interest specified, or required to be specified, in a written disclosure notwithstanding the date when it is required under section 3 to be filed".

Section 3 of the Act requires that disclosure forms include shares held legally or beneficially, businesses in the province which financially remunerate the minister for services performed as an "employee, officer, owner of part owner, director, trustee or partner", creditors of the minister and lands owned within the province. (emphasis added)

Section 1(1)(28) of the Business Corporations Act, 1982, as amended, defines officer of a private Ontario corporation to include:

> "the chairman of the board of directors, a vice-chairman of the board of directors, the president, a vice-president, the secretary, an assistant secretary, the treasurer, an assistant treasurer and the general manager of a corporation, and any other individual designated an officer of a corporation by by-law or by resolution of the directors or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office;" (emphasis added)

It is implicit in this definition, and so as not to "detract from the basic public trust", that an officer of an Ontario private company, have an interest in that corporation within the terms of the 1985 Guidelines. Clearly, the public's trust in government would seriously suffer if persons subject to the 1985 Guidelines were allowed to play word and legal games with the concept of officer and thus somehow avoid its restrictions and responsibilities.

From all of the foregoing, it is clear that "interest" in the context of the 1985 Guidelines, and particularly the clause in question, must be defined to include the following provisions:

(a) some involvement between the Minister or the Minister's family member as the case may be, and the private Ontario company in question;

(b) the involvement should be more than a mere passive association, such as an endorser or promoter of the company or its product, and one which involves some active conduct, pursuant to some legal or similar duty;

(c) the nature and extent of the Minister's involvement with the private company should contribute measurably to the company's business operations and prospects; and

(d) any contractual involvement between the private company and the government of Ontario should improve or would likely improve, directly or indirectly, the status or lot of the Minister. Simply stated, on any reasonable assessment, is it likely that the Minister will or may benefit measurably as a result of the contract. It is not necessary to list exhaustively, for the purpose of this report, all of the possible involvements that come within this definition of interest. However, one particular involvement needs to be addressed.

In any event, where a Minister, regardless of the nature and scope of the involvement with the private company, becomes directly involved in discussions and negotiations with the provincial government in pursuit of such contractual involvement, that Minister has an interest in the company which is covered by the Guidelines. Such an involvement places tremendous pressures on the government representatives with whom the negotiations are taking place. It is difficult to imagine how any decision could be made on the merits of any intended contract without some impact resulting from the presence and participation of the Minister.

This interpretation was held by both **Wright** and **Eberts** when they advised **Wilfred Caplan** in **1985.** Their advice was clearly that any front-line participation in any negotiations with **IDEA** or any other government body would violate the Guidelines. In this regard, the Committee concludes that the opinion given by Wright and Eberts was correct.

(ii) "Contractually Involved"

It is important to observe at the outset that this phrase must be read in the context of the private Ontario corporation and its dealings with the provincial government. The Committee heard divergent views as to the scope of this phrase. **Wright** has interpreted it to be little beyond the scope of section 10 of the Legislative Assembly Act (Exhibit "K") which only covers a contract for "service, work, matter or thing", whereas **Eberts** gives the phrase a more "generous" interpretation, certainly beyond that of section 10 of the Legislative Assembly Act.

The "contract" in question here is between **IDEA** and **Wyda**, whereby the former has invested 3 million dollars in return for a 27 percent equity participation. The closing documents reviewed by this Committee are substantial and complex in nature and include a Subscription Agreement whereby the shares are "sold" to **IDEA**, a Shareholder's Agreement between **IDEA** and **Wyda**, among others, and a Retraction Option Agreement whereby **Wyda** is given an opportunity to re-purchase certain percentanges of **IDEA's** investment. It would be absurd to interpret the phrase "contractual involvement" to exclude any or all of these agreements.

In any event, even if a narrow interpretation along the lines of section 10 of the Legislative Assembly Act were preferred, it is the Committee's opinion that this transaction should fall within its scope. It is certainly an agreement in respect of which a "matter" or "thing" is paid for. The law recognizes that an agreement for the purchase of shares is a purchase of a "thing".

(b) "Contract Exception Clause"

The Committee heard varied interpretations of the scope of this exception. **Wilfred Caplan** was advised by **Wright** in **March of 1986** that it could be read so as to permit the company in which he had then acquired an interest, **Taurus,** to apply for and obtain an **O.D.C.** grant, something which is in substance no different than an **IDEA** investment. In fact, **Wilfred Caplan** confirmed to the Committee that he interpreted the advice as permitting an **IDEA** investment in **Wyda** even if he had held a share interest.

The Committee rejects that interpretation. If it were given that wide a scope, then a substantial number of potential contracts with the provincial government would be excluded from the scope of the 1985 Guidelines. With such a wide interpretation, it is arguable that Ministers of the Crown would have less onerous restrictions and obligations imposed on them than ordinary members pursuant to section 10 of the Legislative Assembly Act, even with the many exclusions of section 11.

The Committee prefers the interpretation of the exception given to it by its author, **Eberts.** The two examples in the exception used to illustrate its scope (OHIP and crop insurance) are significant. In other words, it is intended to cover such things and benevolent contracts available on a general basis to the public, or a sufficiently large segment of the public, which public policy requires be granted without any discretion (such as farmers during times of crop disaster). The exclusion clause was intended to relieve against harsh effects of general prohibition from the type of matters that are generally considered to be available to everyone in this province as part of the government's social programs.

A review of the objects and powers of **IDEA** as set forth in section 10 of the IDEA Corporation Act confirms that the entire

process of deciding whether to invest in an Ontario company is repleat with the exercise of discretion.

The Committee has little difficulty in finding that this exception clause has no application to the circumstances of the **Caplans**, and particularly, **IDEA's** investment in **Wyda**.

(c) "Basket Clause"

The concluding clause of the 1985 Guidelines ("Basket Clause") establishes that they are not exhaustive. It is clear from a reading of this clause that the 1985 Guidelines do not, in fact, cover all circumstances wherein a Minister or a member of a Minister's family, will be in breach. It is unfortunate that after alerting a Minister that the 1985 Guidelines do not "embrace all possible situations representing or suggesting a conflict of interest", they do not give guidance or advice on how those situations may be identified and dealt with. Perhaps that was the intent of the **Wright** process. It should certainly be a feature of any new process.

A reading of this clause in relation to the other features of the 1985 Guidelines indicates that a perception test is not included. The question of whether such a test should be included in the Guidelines is discussed in part 4 below.

Clearly this clause is intended to caution a Minister that in any given circumstance wherein the Minister or a member of the Minister's family is associated with any contractual involvement with the provincial government, the 1985 Guidelines, both in letter and in spirit, should be reviewed and advice sought as to the appropriate course of action which should be taken in the circumstances. If that had been done in this case, it is reasonable to conclude that this inquiry would not have been necessary.

2. **Has there been an apparent breach or an actual breach, either deliberate or inadvertent, of the Guidelines by reason of Wilfred Caplan's personal or corporate association with, efforts on behalf of and remuneration received from Wyda.**

The Committee, in attempting the address the issues relating to the meaning and scope of the guidelines and the effectiveness of the process that was in place subsequent to the change in government, believes that the testimony of the Premier before the Committee speaks for itself in addressing these issues. The Committee examined the conflict of interest guidelines in force since 1972 and the decision of this government to amend the guidelines in force upon taking office. This government expressed its intentions to change the guidelines.

However, from a review of the evidence as a whole the Committee concludes that the new guidelines were less harsh than those in force previously in that they now expand the blind trust provisions and in that they now allow a private company in which a Minister or his or her spouse has an interest to do business with the government provided the company is placed in a blind trust. Premier Peterson said

> "I don't want the system to be so restrictive that it drives people away from politics."

He added, however,

> "I came to the conclusion that our Guidelines are so unclear. There is no enforcement. The job of the First Minister is that he or she becomes the sole person of judgment on the matter."
>
> "...I did not spend a lot of personal time on this matter, and in retrospect, I wish I had."
>
> "...I guess in restrospect, if I had to do the whole thing again, I would have done a

> major review of the guidelines then a very tight cross-examination...I didn't".

He agreed that

> "Ultimately, I am responsible for everything that happens. You're right. If errors of judgment are made anywhere, I take the responsibility."

Wilf Caplan was in breach of the conflict of interest guidelines. He had an interest in **Wyda.** He participated in the negotiations for the **IDEA** investment. He was held out as an officer of **Wyda.**

The **IDEA Corporation** was established to make investment decisions independent of government. However, in reviewing the evidence as a whole it appears that some **IDEA** personnel were conscious of the fact that some people associated with Wyda were close to the government. It is the view of this Committee that it may have been one of the factors which weighed upon **IDEA** in respect to the **Wyda** investment. Given the expressed intent of the government to wind-down the **IDEA Corporation,** some staff and officers may have sought to change the government's position with regard to the future of the Corporation and their own careers. The extent and nature of the weight given by **IDEA** personnel to these particular circumstances is not capable of precise and accurate assessment.

Elinor Caplan exercised poor judgment. She intended to comply with the conflict-of-interest guidelines. She did not live up to her responsibilities as a Cabinet Minister to ensure that she was fully aware of her spouse's business activity and to ensure that her spouse was in compliance. In testimony before the Committee she indicated had she known "We wouldn't be here". There is no evidence of **Elinor Caplan** having exerted political influence to aid in the decision of the **IDEA Corporation** to invest in **Wyda.**

3. **What is the nature and extent of the investment by the IDEA Corporation in Wyda and was that investment made at all as a result of political influence.**

IDEA invested 3 million dollars in return for 27 percent of the equity of **Wyda.** The equity was obtained by the issuance to an **IDEA** subsidiary, **IDEA Research Investment Fund Inc.** of 270,000 Class "B" special shares pursuant to a Subscription Agreement between the parties dated **April 12, 1986.**

IDEA has granted Wyda an option to repurchase up to 162,000 of the Class "B" shares issued, such option to be exercised in whole or in part prior to **April 18, 1990.** The option will also terminate if the directors of **Wyda** make any decision to distribute any common shares of the company by way of a public offering. The price per share of the repurchase increases with each year that the option is not exercised. For example, the repurchase price per share at any time before **April, 1987** is $15.55, whereas the repurchase price between **April, 1989 and 1990** is $42.68 per share.

If **Wyda** were to fully exercise the option and reacquire the shares in question before **April 18, 1987, IDEA** would receive $2,519,100.00 and would still hold 108,000 shares or roughly 10 percent of the equity based on shares currently outstanding.

Consistent with **IDEA's** mandate, the investment was structured so as to encourage the company in developing, manufacturing and marketing a solid modular based CAD/CAM (computer aided design/computer aided manufacturing) system and consequently enhancing the high technology industry in Ontario. In other words, **IDEA** intended that the money would in substantial terms, be used to overcome the obstacles and problems which existed and which had to be mastered before the product could be marketed.

In recommending the investment, **IDEA** personnel identified certain matters that required immediate attention. Such matters included the work remaining to create a solid modular breakthrough to circumvent major limitations of competitive CAD/CAM work stations, completion of data work station tests and the significant management and organizational problems inherent in building a necessary corporate infrastructure for such a marketing task. The Committee did not receive any evidence that, prior to the decision to invest, **IDEA** personnel intended that a substantial portion of the monies invested would be used to pay down long-term debts. Nor does it appear that **IDEA** sufficiently assessed the nature and extent of Wyda's long-term debt situation and whether any real need existed to retire those debts immediately or at all.

It must be remembered that **Wyda's** total investment needs during the material times were 6 million dollars, half of which had been obtained from **IDEA.** The 3.5 million dollars (approximately) used to retire the long-term debts came from **Dobzinski** and his family, and is not included in that 6 million dollars.

From an examination of the payments made to creditors by **Wyda** from **April 19th to the 30th, 1986** (Exhibit "L-14") it appears that there was an accelerated effort to recoup from **IDEA's** funds monies which had previously been "invested in the company" by **Dobzinski,** members of his family or other interests with which he has been or continues to be associated.

In any event, a substantial portion of the 3 million dollars has been employed in a manner not contemplated by the **IDEA** Board of Directors. The impact that it has had on the nature of the investment is not possible to assess, from the evidence the Committee has heard. However, because so much of the 3 million dollars was paid out almost immediately after the investment was made, **Wyda** will be in need of further capital sooner than projected. That is best evidenced by the subsequent decision of

the **IDEA** Board of Directors to invest a further half million dollars in **Wyda** on fulfillment of certain conditions referable to the Product development. To date, that transaction has not been finalized. The Committee understands that **ODC**, which now controls the **IDEA** portfolio, has deferred that decision pending this Committee's report.

It appears, however, that the **IDEA** investment has permitted **Wyda** to develop its Product to the point where it can now be actually demonstrated to prospective customers. If **IDEA's** enthusiasm for **Wyda's** Product is even in part justifiable, then it appears, overall, that the investment was certainly consistent with **IDEA's** mandate and may well enhance the economic growth of this province provided that sufficient steps have been and will be taken to ensure that:

(a) **Wyda** key personnel and its product remain in Ontario;

(b) **Wyda** be the sole beneficiary of all revenue associated with the sale of its product when marketed;

(c) future capital invested in **Wyda** be used exclusively to further develop further and market the product and not be used to serve and/or retire debts of the type in existence and which were retired immediately prior to the investment closing.

4. **Do the existing Guidelines impose adequate and/or clear obligations and restrictions on Ministers of the Crown? If the answer is NO, then how should these obligations and restrictions be strengthened, clarified and applied?**

Having examined the Guidelines, the manner in which they were interpreted, enforced and monitored, and the testimony of both the **Premier** and **Elinor Caplan** in this regard, the Commitee concludes that the answer to this question is clearly NO: the existing Guidelines impose neither adequate nor clear obligations and restrictions on Minister of the Crown.

In addressing how these obligations and restrictions should be strengthened, clarified and applied, the Commitee offers the following recommendations:

- THE GUIDELINES MUST BE REPLACED BY LEGISLATION OR REGULATIONS UNDER APPROPRIATE EXISTING LEGISLATION.(2)

- THE ROLE AND PLAIN MEANING OF NEW CONFLICT OF INTEREST PROVISIONS SHOULD BE CLARIFIED TO ALLOW FOR UNEQUIVOCAL INTERPRETATION AND ADVICE.(3)

- APPROPRIATE AND EFFECTIVE MECHANISMS FOR INTERPRETATION, ENFORCEMENT AND MONITORING OF PROVISIONS SHOULD BE DEVELOPED. WITH RESPECT TO INTERPRETATION, RESPONSIBILITY FOR PROVIDING ADVICE TO MINISTER SHOULD BE VESTED IN A NON-PARTISAN AND INDEPENDENT ADVISOR.(4)

- PROVISION SHOULD BE MADE FOR A NON-PARTISAN AND INDEPENDENT ARBITER FOR CONFLICT OF INTEREST COMPLIANCE.(5)

- THE IMPOSITION OF AN ARBITER SHOULD NOT REMOVE RESPONSIBILITY FOR COMPLIANCE FROM A MINISTER NOR RELIEVE THE PREMIER OF HIS OBLIGATION TO MONITOR COMPLIANCE. THE NECESSITY FOR RESPONSIBLE GOVERNMENT WITH REGARD TO COMPLIANCE SHOULD NOT IN ANY WAY BE DIMINISHED.(6)

- A BLIND TRUST PROVISION, WHERE AND IF APPROPRIATE, SHOULD BE CAREFULLY STRUCTURED TO PROTECT AGAINST A MINISTER DIRETLY OR INDIRECTLY BENEFITTING FROM OR PROVIDING A BENEFIT TO HIS HOLDINGS.(7)

- **ANY BLIND TRUST PROVISION MUST DEFINE PRECISELY THE RESPONSIBILITIES OF THE TRUSTEE IN THE ADMINISTRATION OF SUCH TRUST ON BEHALF OF A MINISTER. (8)**

The Committee also discussed, by reference to other jurisdictions, how these and additional conflict of interest provisions might be implemented in Ontario. The Comitee suggests that there be consideration of this general discussion and the alternatives outlined below in developing new conflict of interest provisions.

The Committee considered:

Whether new conflict of interest provisions should take the form of legislation or remain guidelines.

Ontario is now the only provincial jurisdiction which has not enacted conflict of interest legislation. At the federal level, conflict of interest is regulated by the Conflict of Interest and Post-Employment Code for Public Office Holders issued in September, 1985. Although federally, as in Ontario, there is therefore no conflict of interest law per se, the federal Conflict of Interest Code is a detailed, multi-part document which consolidates provisions formerly contained in five separate documents and is structured and worded to resemble, in all but name, a law.

Newfoundland was the first province to enact legislation dealing specifically with conflict of interest. The provincial Conflict of Interest Act, 1973 has twice been amended to expand provisions relating to late filing of disclosure documents (1978) and the Premier's power to establish guidelines respecting a Minister's conduct of official funtions as they relate to his business affairs (1982). New Brunswick was the second province to enact discrete conflict of interest legislation; the province's Conflict of Interest Act was passed and in effect in 1978.

In many jurisdictions, conflict of interest provisions are contained within broader legislation regulating provincial legislatures. Thus, embedded in the British Columbia Constitution Act (1979), the Alberta Legislative Assembly Act (1983), the Quebec National Assembly Act (1982) and the Nova Scotia House of Assembly Act (1982) are sections which variously define, prohibit, penalize and otherwise set provisions protecting against conflict of interest by elected representatives.[1]

In Saskatchewan, conflict of interest is regulated by both the Legislative Assembly and Executive Council Act (1979) and more pointedly by The Members of the Legislative Assembly Conflict of Interest Act (1980). A 1986 White Paper on a proposed code of ethical conflict of interest for Saskatchewan public office holders was released recently by the Premier's Office and may result in new adjustments to conflict of interest regulation in the province.

Prior to the enactment of the Legislative Assembly and Executive Council Conflict of Interest Act, which was proclaimed in 1985 and amended in 1986, Manitoba was guided by the conflict of interest provisions in its Legislative Assembly Act. Similarly, Prince Edward Island's newly-passed but not yet proclaimed Conflict of Interest Act (1986) replaces the limited conflict of interest provisions formerly set out in the province's Legislative Assembly Act (1974).

Whether and to what extent conflict of interest provisions should apply to private Members, as well as Minister and Parliamentary Assistants.

The federal Conflict of Interest Code, like the Ontario 1985 Guidelines, does not apply to all Members. However, the definition of "public office holder" under Part I of the federal

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[1] It should be noted that the Ontario Legislative Assembly Act also contains limited and selective provisions relating to conflict of interest.

guidelines includes not only Minister of the Crown and their parliamentary secretaries, but also: a member of ministerial exempt staf; a Governor in Council appointee (other than a judge); and employee of a department; and employee of a separate employer as defined in the Public Service Staff Relations Act; an officer, director or employee of a federal board, commission or other tribunal as defined in the Federal Court Act; a member of the Canadian Armed Forces; and a member of the Royal Canadian Mounted Police. Subsequent parts of the Code distinguish between Category A public office holders (Ministers, parliamentary secretaries, senior ministerial and exempt staff, and appointees) and Category B public office holders (certain departmental employees, for instance.)

Conflict of interest legislation in the provinces applies to all Members of their respective legislatures. Provincial conflict laws in Manitoba, New Brunswick and Prince Edward Island also contain sections which provide specifically and separately for ministerial responsibilities with respect to conflict compliance.

The Newfoundland Conflict of Interest Act, 1973 makes conflict provisions applicable to both Members and public employees. While the British Columbia Constitution Act sets out conflict of interest regulations for all MLAs, the Financial Disclosure Act, which also contains certain conflict provisions, makes written disclosure requirements apply to both "provincial officials" (defined as members of the Legislative Assembly) and public employees.

Whether and to what extent spouses and other family members should be subject to conflict of interest provisions and require independent legal advice with regard to compliance.

In the September 9, 1985 letter to Ministers which accompanied the federal Conflict of Interest Code, Prime Minister Brian Mulroney acknowledged that "this Code, as was the case with

previous Guidelines, does not apply to the spouses or dependent children of pbulic office holders." However, the letter also cautions Minister that they have "individual responsibility to prevent conflicts of interest, including those that might arise out of activities of their spouses or dependent children." The hiring or contracting with family members, treated as a separate matter, is discussed as a practice which, as a general rule, should be avoided, although "[i]nevitably, circumstances will arise that may justify stepping outside this general framework."

The federal conflict of interest provisions are unique in thus expressly exempting family members from being subject to such provisions. The Saskatchewan conflict of interest legislation does provide an exemption for spouses and dependent children by stating that they are not prohibited from participating in a government contract in any manner other than for or on behalf of a member. However, the section of the Saskatchewan law dealing with filing of disclosure statements also requires that such filing state the nature and extent of any participation in a government contract by the Member of any person in his family.

Conflict of interest provisions in British Columbia, Newfoundland and New Brunswick also apply to family members only in respect of disclosure filings. The B.C. Financial Disclosure Act requires public office holders who jointly own with a spouse, child, brother, sister, mother or father more than 30 percent of the voting shares of a corporation to provide prescribed information on these holdings. The Newfoundland legislation is somewhat discretionary in that it requires Members and public employees and their spouses or minor children to declare each and every interest in which there is a possibility of a conflict between such interest and a Member's/public employee's position. The New Brunswick Conflict of Interest Act refers to family members in defining a blind trust as the placing of a real or

personal property in a trust where neither a spouse nor a child is a trustee, and in making disclosure requirements applicable to spouses and dependent children.

New conflict of interest legislation in both Manitoba and Prince Edward Island requires Members' dependents to be subject to financial disclosure provisions, and in the case of Manitoba, continuing disclosure requirements. But the application of conflict provisions to family members is even more extensive in these provinces, which have almost identical requirements for Ministerial participation in Cabinet meetings where they or their dependents have a direct or indirect pecuniary interest in a matter under discussion. Ministers are required to disclose the nature of that interest, withdraw from the meeting without voting or participating in discussion and refrain from attempting to influence the matter. Under Manitoba conflict of interest legislation, similar conduct is required of a Minister if, in the performance of his statutory or regulatory functions, a conflict involving him or dependents arises. In P.E.I. similar provisions also extend to meetings in which Members or their dependents are discovered to have an interest.

The Manitoba and P.E.I. conflict laws differ slightly, however, with respect to their definition of dependents. In Manitoba, a dependent refers to the spouse of spousal equivalent and any child, natural or adopted, who resides with the Minister/Member. P.E.I.'s conflict act defines a dependent as a spouse or spousal equivalent who resides with the Minister/Member and any other person whose primary source of financial support is the Minister/Member.

In Alberta's conflict legislation, application to family members extends only to a Member's spouse (except in cases of legal separation), and a spouse is considered a person "directly associated with a member" for the purposes of the Act's compliance provisions. In Alberta, as in Ontario, conflict of interest

provisions are expressly applicable to family members, although in Ontario family members include both spouses and minor children of Minister, Parliamentary Assistants and confidential staff.

Neither Quebec nor Nova Scotia provide for or mention family members in their respective conflict laws.

THE COMMITTEE RECOMMENDS THAT ANY OBLIGATIONS CURRENTLY SET OUT IN THE GUIDELINES CONTINUE TO APPLY TO MINISTERS AND THEIR SPOUSES AS DEFINED UNDER THE FAMILY LAW ACT AND TO CHILDREN AS SET OUT IN MUNICIPAL LEGISLATION. THE DEFINITION OF CHILDREN SHOULD BE EXPANDED TO INCLUDE AT LEAST THOSE WHO CONTINUE TO RESIDE WITH OR ARE DEPENDENT UPON MINISTERS AND THEIR SPOUSES. CONSIDERATION SHOULD ALSO BE GIVEN TO EXPANDING THE DEFINITION OF CHILDREN TO INCLUDE ALL CHILDREN, REGARDLESS OF RESIDENCE, AGE OR FINANCIAL DEPENDENCE.(9)

Whether there should be restrictions on Members in their pre- or post-parliamentary employment or professional activities.

Pre-parliamentary restrictions on Members are almost non-existent in Canada, perhaps because the extension of conflict of interest provisions in this manner could be regarded as unnecessarily intrusive and a deterrent to entering political office. The British Columbia Financial Disclosure Act does contain one provision which might be interpreted as a pre-parliamentary restriction: it requires a person who accepts a nomination for election to a provincial or municipal office to file a written disclosure of interests with his nomination papers. The Manitoba Conflict of Interest Act, on the other hand, excludes any contract or pecuniary transaction entered into before a Member was elected or a Minister appointed to the Executive Council from disclosure filings of interests and assets.

Post-parliamentary restrictions on Members are almost as rare in the provinces. Newfoundland's Conflict of Interest Act, 1973 contains no references to post-parliamentary activities;

however, the 1983 Ministers Guidelines apply to Ministers and their family members for one year after leaving public office. The Alberta Legislative Assembly Act stipulates that a disclosure statement (called a "return") must be filed within 30 days after a Member ceases to be a Member. This return must provide the names and addresses of persons who are or ceased to be directly associated with a Member, and the dates upon which such association began or ended.

The most extensive post-parliamentary provisions are those set out in Part III of the federal Conflict of Interest Code, which describes compliance measures for former public office holders and current public office holders anticipating departure from public office. Compliance measures include disclosing in writing all firm offers of outside employment that could place the office holder in conflict and acceptance of such offers. Former public office holders are prohibited from acting for or on behalf of any person, commercial entity, association or union in any matter to which the government is a party and in which the former public office holder was, during his tenure, involved. Other prohibitions are subject to a limitation period of one year, and in the case of Ministers, two years after leaving office. Under certain prescribed circumstances, the limitation or cooling-off period may be reduced by a designated authority. Any decision by a designated authority and advisory panel on compliance with post-employment Code provisions may be reconsidered upon application. Failure to comply with the post-employment provisions is a violation of the Code and may be punishable as such.

THE COMMITTEE RECOMMENDS THAT POST-EMPLOYMENT RESTRICTIONS ON MINISTERS NEED NOT BE IMPOSED AS SUCH PROVISIONS ARE NOT WARRANTED AT PRESENT.(10)

Whether a blind trust offers an adequate means of freezing or neutralizing assets and interests, or whether some alternative should be sought.

Not all jurisdictions have blind trust provisions for conflict of interest compliance. In those that do, there are certain features common to the creation of a blind trust for conflict prevention: the blind trust is considered either a form of or an alternative to divestment through outright sale of holdings; a Minister/Member and prescribed family members are not to exercise any control of the funds held, managed and invested through the trust; and there is mandatory disclosure of assets placed in such a trust.

Under federal conflict of interest guidelines, four methods of compliance are provided. These include avoidance, confidential report, public declaration and divestment. Divestment is defined as "the sale at arm's length, or the placement in trust, of assets where continued ownership by the public office holder would constitute a real or potential conflict of interest with the public office holder's official duties and responsibilities." There is also provision for a designated official to determine which is the appropriate method of compliance, should any doubt arise. Types of assets exempt from the compliance methods described are outlined as well.

Three types of trusts are described in the Schedule appended to the Code:

A blind trust is one in which the trustee makes all decisions concerning management of trust assets without the public office holder's knowledge or control; however, the public officer holder may receive income earned by the trust, add or withdraw capital and be informed of the aggregate value of entrusted assets.

A frozen trust is one in which no active decision making is required. The trustee merely maintains the holdings essentially as they were when the trust was established. As with the blind trust, the income earned by the frozen trust may still be received by the public office holder.

The third form of trust, **a retention trust**, is one in which the trustee maintains rights in holding companies, established for estate planning purposes, essentially as they were when the trust was created. A third party exercises any voting rights, provided that such arrangements will not result in a conflict of interest. Retention trusts usually do not generate income for the settlor, who in this context would be the public office holder.

The Schedule also makes provisions for other aspects of trust arrangements, such as the duration of trusts, return of trust assets, filing of trust documents and reimbursement for costs incurred in establishing a trust.

The 1985 Guidelines in Ontario preserve the main features of the blind trust provisions under the 1972 Guidelines, with one exception. The 1985 Guidelines allow for the creation of a "frozen" blind trust which would simply hold assets rather than dispose of them or otherwise invest them. This "frozen" blind trust may apply to "a closely held family company," as is the case with federal provisions for frozen trusts.

In the other provinces that make provision for blind trusts - and this includes Alberta, New Brunswick and Newfoundland - variables relate mainly to the methods and extent of disclosure. In the provinces which have no blind trust provisions such full disclosure may serve as an alternative to the creation of a blind trust. Quebec conflict of interest law, in addition to requiring full disclosure by Members annually, makes divestment of certain

assets a requirement, but whether divestment can include a blind trust option is not specified. Nova Scotia is the only province which makes no provision for either disclosure or divestment.

Whether disclosure of financial assets and interests should be more extensive and enforcement more rigorous.

Disclosure provisions vary considerably with respect to content requirements, how and when disclosure statements must be filed, and the consequences, if any, for filing a late, incomplete or inaccurate statement.

Generally, assets itemized in disclosure statements include property holdings, shares in corporate or land investments, and businesses in which there is a proprietary interest or other principal involvement. Exempt assets typically include residential or recreational property which is for personal or family use only, and personal investments, such as savings plans or insurance policies.

In some cases, percentage of interest may determine whether an assets need be disclosed. Thus, under the B.C. Financial Disclosure Act, a Member who owns jointly with a family member more than 30 percent of the voting shares for a corporation is required to include this in a written disclosure. In Manitoba, a 5 percent or greater interest in land, corporate or stock holdings makes such interest subject to disclosure. In other cases, only assets worth a prescribed dollar amount must be disclosed. The Saskatchewan conflict of interest legislation, for instances, does not require disclosure for any business or participation share valued at $5,000 or less during the period in respect of which the report is made. Reporting of participation in a government contract is also not required if the aggregate remuneration paid to the Member is $10,000 or less.

In most of the provinces, disclosure statements are filed with the Clerk of the Assembly within stated time limits. Newfoundland's Conflict of Interest Act, 1973 requires disclosure statements to be filed with the Clerk, and the Provincial Treasurer must also prepare a report at the end of each fiscal year on the information supplied by the Members. New Brunswick's legislation requires disclosure to be made under oath to a judge of the Court of Queen's Bench prior to Members and Ministers taking office.

The federal conflict guidelines require Category A public office holders to supply information on their applicable assets and interest to the Assistant Deputy Registrar General (ADRG). The Summary Statement prepared by public office holders upon compliance with conflict of interest guidelines is subject to the approval of the Prime Minister (for Ministers of the Crown) or the ADRG for the other public office holders.

Disclosure statements are commonly filed at least once per year or per session. In British Columbia, statements must be filed twice annually and within 15 days after a Member leaves office. P.E.I. and Newfoundland require the filing of intial disclosure statements before a Member assumes his seat for the first time. A revised filing must then be submitted within 10 sitting days in P.E.I. and within 30 sitting days in Newfoundland. There is also the requirement in Newfoundland that disclosures be filed on or before January 15 each year thereafter.

Several jurisdictions have provisions for ad hoc disclosure in addition to annual or sessional disclosure. At the federal level, disclosure can be made through confidential report and ultimately Public Declaration to reflect a change in financial circumstances, such as the receipt of any gift or benefit. In such cases, the ADRG must be notified fo the changes, and within 60 days a Public Declaration must be mae. Manitoba conflict of interest legislation contains a continuing disclosure provision,

while Saskatchewan law provides for special reports to be filed within 60 days after a Member enters into a new contract. Newly-acquired interests not appearing in previous statements must also be disclosed within 60 days of acquisition under Newfoundland's legislation. Limited disclosure provisions in P.E.I. allow Members to submit to the Clerk a separate statement relating specifically to a financial interest representing a possible violation. These "limited disclosures" are to be held in confidence by the Clerk and destroyed after 2 years.

Late filing of a disclosure statement in P.E.I. could result in a Member failing to receive remuneration and expenses for the delay period, unless the clerk is satisfied that there is a reasonable excuse of the late filing. Under Manitoba conflict of interest law, Members are to receive notification of failure to comply with disclosure requirements within the time specified. Failure to file a statement is punishable by suspension without pay for the remainder of the session in progress, or if no session is in progress, the duration of the next session. Similarly, a Member who fails to satisfy the Newfoundland Auditor General that there is a reasonable excuse for late filing would be rendered ineligible for the remuneration to which he would normally be entitled for the period of failure.

Filing of an incomplete or inaccurate disclosure statement is interpreted in many jurisdictions as a violation of conflict of interest compliance provisions and would be subject to further recourse and penalties.

IN ONTARIO, DISCLOSURE STATEMENTS MUST NOW BE FILED WITH THE CLERK OF THE ASSEMBLY WITHIN SIX MONTHS AFTER A MINISTER TAKES OFFICE. THE COMMITTEE RECOMMENDS THAT THERE SHOULD BE MORE COMPREHENSIVE DEFINITION OF TYPES OF INTERESTS WHICH MUST BE DISCLOSED AND THAT THIS SHOULD INCLUDE FULL DISCLOSURE OF ALL BENEFICIAL INTERESTS. FURTHERMORE, DISCLOSURE OF NEWLY-ACQUIRED

INTERESTS SHOULD BE REQUIRED. ONGOING DISCLOSURE REQUIREMENTS SHOULD BE MONITORED SO THAT FAILURE TO REPORT CHANGES IN CIRCUMSTANCES CAN BE DETECTED AND PENALIZED.(11)

Whether there should be penalties, financial and otherwise, for failure to comply with conflict of interest provisions and how such penalties should be determined.

Failure to comply with conflict of interest and disclosure provisions is, in most provinces, an offence punishable by any or a combination of the following penalties: disqualification from membership in the Legislative Assembly, a fine, payment of restitution for the amount or value of the prohibited pecuniary gain, and possible imprisonment.

In British Columbia, there is provision under the Constitution Act for disqualification of a Member who is found by a special commitee appointed under the Standing Orders to have violated the conflict of interest prohibitions under the Act. Upon the Legislative Assembly adopting the Committee's report, "the member shall forthwith cease to be a member and his seat shall be vacated."

Under the B.C. Financial Disclosure Act, failure to file or make a written disclosure is, upon conviction, subject to a fine of not more than $10,000. A court may also require a provincial official who contravenes the Act to repay what the court determines is the amount of the financial gain to the provincial government.

An action for disqualification may be commenced by any eligible voter in Alberta. A court's judgment on whether a Member is in violation of the conflict of interest sections of the provincial legislation is submitted to the Assembly and then referred to the Select Committee on Privileges and Elections for a decision on disqualification.

The Saskatchewan Legislative Assembly and Executive Council Act requires a Member who is found by a court to be in conflict to vacate his seat and remain ineligible to stand for election during that term of the Assembly. The Member may also be fined $500. The provincial conflict of interest legislation allows fines for Members convicted of an offense under the Act to be as high as $10,000 for a summary conviction. A further penalty of $10,000 per day for each day during which the offense continues may also be ordered. (A Member has 60 days from the date of conviction to cease or remedy any act or omission for which he was convicted.) The prohibited profits realized by the Member are to be accounted for and paid over to the Minister of Finance.

In Manitoba, any voter may commence an action against a Member for alleged violation of the Conflict of Interest Act. If a judge of the Queen's Bench determines that the Act has been violated, that Member may be disqualified from office, suspended without pay for a maximum of 90 sitting days of the Assembly, ordered to pay a find not exceeding $5,000, or required to make restitution to the government or a Crown Agency for the pecuniary gain realized in violation of the Act. There is a six-year limitation period on making an application for an alleged violation of the Act.

Although the Ontario guidelines do not discuss penalties for contravention of conflict of interest provisions, the provincial Legislative Assembly Act provides that a Member who knowingly accepts or receives any fee compensation or reward for a service rendered in respect of a matter before the Assembly is subject to prosecution. If the Supreme Court renders a guilty judgment, the Member is liable to a penalty equal to the amount or value of the fee, compensation or reward, plus a $500 penalty. If judgment is recovered against a Member, or he is declared in violation of the Act by resolution of the Assembly, his seat shall

be vacated and he is barred from seeking re-election for the remainder of the term. There is a six-month limitation on the issuance of a writ alleging contravention of the Act.

The Quebec National Assembly Act allows a Member to bring a complaint against another Member for alleged conflict of interest. The Commitee on the Assembly examines the complaint and reports to the Assembly. If the Assembly adopts the report ascertaining that a Member holds an "incompatible office" the seat of that Member becomes vacant. The full range of penalties, as determined by the National Assembly, may include one or more of the following: (1) reprimand; (2) a fine; (3) the refund of illicit profit; (4) the refund of indemnities, allowances or other sums he received as a Member while the offence continued; (5) a temporary suspension, without indemnity; (6) the loss of his seat as a Member. A Member who is placed in a situation of conflict unknowingly or against his will does not contravene the Act; however, he must put an end to the situation within six months.

Under New Brunswick's conflict of interest legislation, any person who believes and can produce sufficient evidence to support an allegation that the financial disclosure provisions of the Act have been contravened may cause a designated judge to inquire into the allegation. The designated judge, who has all the powers, rights and privileges vested in the Court of the Queen's Bench, may establish appropriate rules of procedure. Based on his findings, the judge may order that any action in violation of the Act be discontinued, that any gain realized improperly be returned, or that the interfering office or position be resigned. A person found guilty of a conflict of interest offence is also liable on summary conviction to a fine of up to $10,000, and to imprisonment for a term of not more than one year. In addition to or in lieu of a fine or imprisonment, the court may order the person to resign his office or position, or prohibit the holding of that office or position for a prescribed period.

The Nova Scotia House of Assembly Act renders any Member who contravenes the conflict of interest provisions of the Act ineligible to be a Member of the House or to sit or vote therein. Contravention of the Act makes a Member liable to a $300 penalty which is payable in addition to the amount or value of the fee, compensation or reward accepted or received.

Prince Edward Island's Conflict of Interest Act allows any Member to make an allegation of conflict of interest against another Member in writing to the Clerk of the Assembly. The Clerk refers such an allegation to the Standing Committee on the Legislative Assembly for a determination. If the Committee cannot make a unanimous decision, the matter must be referred to a judge of the Supreme Court. The judge may either make a declaration that a Member/Minister has commited a violation or refuse to make such a declaration. Where a violation has been declared, the judge shall declare the Member's seat vacant and may require that restitution in the amount of the pecuniary gain be made to the government or Crown Agency. Any other person affected by the pecuniary gain may also apply for restitution. Any unknowing or inadvertent breach does not disquality a Member from office. The limitation period for applying for a declaration is two years.

Contravention of the Newfoundland Conflict of Interest Act, 1973 or knowingly making a false disclosure statement is an offence subject to, on summary conviction, a fine of up to $1,000. In default of payment of the fine or in addition to the fine, a court may order the guilty party to be imprisoned for up to three months. Filing a late disclosure statement, or failure to file a statement, renders s Member ineligible for the remuneration to which he would normally be entitled for the period of failure. In such cases, the Auditor General determines the amount of remuneration to be withheld.

Federal conflict of interest guidelines state only that failue to comply with measures set out in the Code could result in discharge or termination of appointment or employment. "[A]pproprite measures" (and presumably penalties) are to be determined by the Assistant Deputy Registrar General. The House of Commons Act does not deal with or prescribe penalties for matters relating to conflict of interest. Under the Criminal Code, however, certain provisions in respect of frauds upon the government and breach of trust (ss. 110 and 111) are applicable to Members of Parliament and carry penalties which include imprisonment.

Whether an arbiter for compliance with conflict of interest provisions should be part of the judicial system or an officer of the Legislative Assembly.

Conflict of interest legislation in most jurisdictions does not make reference to an advisor or advisory process for compliance. The Alberta Legislative Assembly Act does provide that Members may seek the advice and direction of the court regarding contracts or payments that may be subject to disqualification. The Conflict of Interest Act in Prince Edward Island gives authority to the Clerk of the Assembly to examine limited disclosure statements and advise Members in writing on whether such statements disclose specific assets or interests. More comprehensive provisions for advice on compliance are found in the Quebec National Assembly Act and in the federal Conflict of Interest Code.

The Quebec legislation allows for the creation of a jurisconsult to advise Members on conflict of interest matters. The jurisconsult is appointed on the motion of the Prime Minister (Premier) and with the approval of two-thirds of the Assembly. (The jurisconsult must not himself be a Member of the Assembly). The function of the jurisconsult is to provide to Members who so request in writing "written and substantiated opinions on whether the situations they may be in are in conformity with the

provisions on compatible offices and conflicts of interest". He may also file with the President of the Assembly a report containing recommendations on the application of conflict of interest provisions without identifying any Member. The opinion of the jurisconsult on the situation of a Member is confidential unless disclosure is allowed by the Member. Thus, if the Comittee of the Assembly is investigating conflict of interest allegations against a Member, the opinion of the jurisconsult may be examined only if the Member allows it. The jurisconsult's involvement in the conflict compliance process is therefore limited to the advisory stage and may, in a passive sense, be a factor in the decision-making stage once an allegation of conflict of interest has been raised.

Under the federal Conflict of Interest Code, considerable advisory and compliance authority is vested in the Assistant Deputy Registrar General. Under the direction of the Clerk of the Privy Council, the ADRG is charged with the administration of the Code and its compliance measures, which includes determining that trust arrangements meet the requirements of the Code. The ADRG, in consultation with the Secretary of the Treasury Board, is also responsible for preparing informational and educational material about the Code and providing training on appropriate Code behaviour.

The Prime Minister or a person designated by the Prime Minister may determine appropriate measures to achieve compliance where there is disagreement between the ADRG and the Category A public office holder. Failure to comply makes the public office holder "subject to such appropriate measures as may be determined by the designed authority, including, where applicable, termination of employment."

As noted in earlier discussion of penalties for non-compliance, decisions on whether provincial Members have violated statutory provisions relating to conflict of interest are

usually referred to the court, in some cases rendered by legislative committees, or determined by a combination of judicial and legislative authorities.

THE COMMITTEE RECOMMENDS THAT AN ARBITER FOR COMPLIANCE WITH CONFLICT OF INTEREST PROVISIONS BE AN OFFICER OF THE LEGISLATIVE ASSEMBLY, APPOINTED IN THE SAME MANNER AS THE OMBUDSMAN OR THE PROVINCIAL AUDITOR. SIMILARLY, ADVICE ON INTERPRETATION AND COMPLIANCE SHOULD BE PROVIDED BY A NON-PARTISAN APPOINTEE OPERATING UNDER THE JURISDICTION OF THE ASSEMBLY RATHER THAN AS A GOVERNMENT OFFICIAL. (12)

Whether and the degree to which a perception test is or should be contained in conflict of interest provisions.

On November 30, 1964, Prime Minister Pearson, in a public warning to his Ministers and their staffs about the need for high standards of conduct, observed:

> "It is by no means sufficient for a person in the office a Minister - or in any other position of responsibility in the public service - to act within the law. That goes without saying. Much more is required. There is an obligation not simply to observe the law but to act in a manner so scrupulous that it will bear the closest public scrutiny. The conduct of public business must be beyond question in terms of moral standards, objectivity and equality of treatment."

The need for public office holders to do more than simply observe the law has been reasserted in federal conflict of interest guidelines since Pearson's time. The current federal Code states as one of its principles that:

> "public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law."

The requirement to act in a way "that will bear the closest public scrutiny" is reinforced by the following provision:

> "Conforming to this code does not absolve individual public office holders of the responsibility to take such additional action as may be necessary to prevent real, potential or apparent conflicts of interest."

The federal Code contains an implied perception test by which Ministers can measure the appearance of probity their conduct maintains. The test is in the form of a reminder that Ministers must appear to be observing the law as much as actually observing it and an attendant requirement that Ministers submit their actions to the kind of constant self-scrutiny which will bear up under public scrutiny.

Under P.E.I.'s conflict law, the provision for limited disclosure of "details of a possible violation" of the Act contains an implied perception test because of the discretionary nature of such disclosure. A Member would have to apply a perception test to decide on the likelihood of the matter at hand being perceived as a conflict before disclosing it.

Except for occasional discretionary provisions such as this, however, provincial legislation generally does not distinguish between actual and perceived conflicts of interest, perhaps because perception does not readily lend itself to recognition in law. Using guidelines rather than legislation as a framework for conflict of interest provisions seems to have allowed the federal Code and, to a lesser extent, the Ontario Guidelines more latitude in dealing with the issue of appearances.

THE COMMITTEE RECOMMENDS THAT APPARENT CONFLICTS OF INTEREST BE AVOIDED AS CONSCIENTIOUSLY AS ACTUAL CONFLICTS OF INTEREST AND THAT THIS PRINCIPLE, TO THE EXTENT POSSIBLE, BE INCLUDED AND EMPHASIZED IN NEW LAWS OR REGULATIONS.(13)

D. SUMMARY OF RECOMMENDATIONS

1. THE COMMITTEE IS PROFOUNDLY CONCERNED THAT NO ONE INTERPRETATION OF THE 1985 GUIDELINES TAKE PRECEDENCE OVER ANOTHER. RATHER, WHAT IS REQUIRED, AFTER ALL OF THE OPINIONS HAVE BEEN EXPRESSED, IS A MECHANISM WHEREBY ALL OF THE OPINIONS GIVEN CAN BE CONSIDERED SO THAT APPROPRIATE ADVICE AND RECOMMENDATIONS CAN BE MADE ON THE FUTURE OF THE 1985 GUIDELINES. THE COMMITTEE RECOMMENDS THAT THE PREMIER CREATE A SPECIAL COMMITTEE OF THE LEGISLATURE TO PERFORM THIS FUNCTION. Page 46

2. THE GUIDELINES MUST BE REPLACED BY LEGISLATION OR REGULATIONS UNDER APPROPRIATE EXISTING LEGISLATION. Page 66

3. THE ROLE AND PLAIN MEANING OF NEW CONFLICT OF INTEREST PROVISIONS SHOULD BE CLARIFIED TO ALLOW FOR UNEQUIVOCAL INTERPRETATION AND ADVICE. Page 66

4. APPROPRIATE AND EFFECTIVE MECHANISMS FOR INTERPRETATION, ENFORCEMENT AND MONITORING OF PROVISIONS SHOULD BE DEVELOPED. WITH RESPECT TO INTERPRETATION, RESPONSIBILITY FOR PROVIDING ADVICE TO MINISTER SHOULD BE VESTED IN A NON-PARTISAN AND INDEPENDENT ADVISOR. Page 66

5. PROVISION SHOULD BE MADE FOR A NON-PARTISAN AND INDEPENDENT ARBITER FOR CONFLICT OF INTEREST COMPLIANCE. Page 66

6. THE IMPOSITION OF AN ARBITER SHOULD NOT REMOVE RESPONSIBILITY FOR COMPLIANCE FROM A MINISTER NOR RELIEVE THE PREMIER OF HIS OBLIGATION TO MONITOR COMPLIANCE. THE NECESSITY FOR RESPONSIBLE GOVERNMENT WITH REGARD TO COMPLIANCE SHOULD NOT IN ANY WAY BE DIMINISHED. Page 66

7. A BLIND TRUST PROVISION, WHERE AND IF APPROPRIATE, SHOULD BE CAREFULLY STRUCTURED TO PROTECT AGAINST A MINISTER DIRETLY OR INDIRECTLY BENEFITTING FROM OR PROVIDING A BENEFIT TO HIS HOLDINGS. Page 66

8. ANY BLIND TRUST PROVISION MUST DEFINE PRECISELY THE RESPONSIBILITIES OF THE TRUSTEE IN THE ADMINISTRATION OF SUCH TRUST ON BEHALF OF A MINISTER. Page 67

9. THE COMMITTEE RECOMMENDS THAT ANY OBLIGATIONS CURRENTLY SET OUT IN THE GUIDELINES CONTINUE TO APPLY TO MINISTERS AND THEIR SPOUSES AS DEFINED UNDER THE FAMILY LAW ACT AND TO CHILDREN AS SET OUT IN MUNICIPAL LEGISLATION. THE DEFINITION OF CHILDREN SHOULD BE EXPANDED TO INCLUDE AT LEAST THOSE WHO CONTINUE TO RESIDE WITH OR ARE DEPENDENT UPON MINISTERS AND THEIR SPOUSES. CONSIDERATION SHOULD ALSO BE GIVEN TO EXPANDING THE DEFINITION OF CHILDREN TO INCLUDE ALL CHILDREN, REGARDLESS OF RESIDENCE, AGE OR FINANCIAL DEPENDENCE. Page 72

10. THE COMMITTEE RECOMMENDS THAT POST-EMPLOYMENT RESTRICTIONS ON MINISTERS NEED NOT BE IMPOSED AS SUCH PROVISIONS ARE NOT WARRANTED AT PRESENT. Page 73

11. IN ONTARIO, DISCLOSURE STATEMENTS MUST NOW BE FILED WITH THE CLERK OF THE ASSEMBLY WITHIN SIX MONTHS AFTER A MINISTER TAKES OFFICE. THE COMMITTEE RECOMMENDS THAT THERE SHOULD BE MORE COMPREHENSIVE DEFINITION OF TYPES OF INTERESTS WHICH MUST BE DISCLOSED AND THAT THIS SHOULD INCLUDE FULL DISCLOSURE OF ALL BENEFICIAL INTERESTS. FURTHERMORE, DISCLOSURE OF NEWLY-ACQUIRED INTERESTS SHOULD BE REQUIRED. ONGOING DISCLOSURE REQUIREMENTS SHOULD BE MONITORED SO THAT FAILURE TO REPORT CHANGES IN CIRCUMSTANCES CAN BE DETECTED AND PENALIZED. Page 78-79

12. THE COMMITTEE RECOMMENDS THAT AN ARBITER FOR COMPLIANCE WITH CONFLICT OF INTEREST PROVISIONS BE AN OFFICER OF THE LEGISLATIVE ASSEMBLY, APPOINTED IN THE SAME MANNER AS THE

OMBUDSMAN OR THE PROVINCIAL AUDITOR. SIMILARLY, ADVICE ON INTERPRETATION AND COMPLIANCE SHOULD BE PROVIDED BY A NON-PARTISAN APPOINTEE OPERATING UNDER THE JURISDICTION OF THE ASSEMBLY RATHER THAN AS A GOVERNMENT OFFICIAL. Page 85

13. THE COMMITTEE RECOMMENDS THAT APPARENT CONFLICTS OF INTEREST BE AVOIDED AS CONSCIENTIOUSLY AS ACTUAL CONFLICTS OF INTEREST AND THAT THIS PRINCIPLE, TO THE EXTENT POSSIBLE, BE INCLUDED AND EMPHASIZED IN NEW LAWS OR REGULATIONS. Page 86

ONTARIO

APPENDIX 1

STATEMENT BY

THE HONOURABLE WILLIAM DAVIS

PREMIER OF ONTARIO

Title → ON GUIDELINES WITH RESPECT TO CONFLICT OF INTEREST:

PARLIAMENT BUILDINGS, TORONTO,
THURSDAY, SEPTEMBER 14, 1972.

No matter of public policy has been more complex nor been of greater concern to me, than this question with respect to conflict of interest.

In announcing the guidelines with respect to conflict of interest, I would point out they are broader in scope and far more definitive and precise than any previously enunciated by any comparable jurisdiction, federal or provincial, in Canada or, to my knowledge, anywhere else. It has been the concern of some who have previously studied this matter that strict and stringent provisions in regard to conflict of interest could inhibit or prevent the participation of many citizens in Government. I sincerely hope that this will not be the case in our own province.

In defining these guidelines, I might say at the outset, for the purpose of clarification, that "family" should be taken to mean the spouse of the Minister and minor children, and that the guidelines will apply to present Ministers of the Government and to those appointed in the future, and, further, that any reference to "land" means specifically land in Ontario.

All members of Cabinet will make public disclosure of the following categories of properties owned by them, in whole or in part, or by their spouses, or their minor children, whether directly held by them, or indirectly through companies or nominees.

First, all land owned in Ontario except property occupied for their own private residential or recreational use, or for the use of their dependents; second, all share or debt interests in private companies and land; third, all partnerships or proprietorships in which they are principals.

During the time members of the Cabinet hold office, they will be subject to the following obligations and restrictions:

Except for land acquired for their personal use for residential or recreational purposes, they and their families will be prohibited from purchasing, directly or indirectly, land or interests in land in Ontario, or interests in land development companies carrying on business in Ontario. I am not ruling out the acquisition of farm lands by a colleague farmer where he or his family intend to farm it, nor am I ruling out the private company acquisition of land for normal

business purposes subject, of course, to disclosure as referred to earlier in this statement.

Second, no private company in which a Minister or his family have an interest may become contractually involved with the Government of Ontario.

Third, while holding office, it will be the responsibility of the individual Minister to ensure that whenever a matter involving a personal beneficial interest comes before the ministry for which the Minister is responsible, being a matter involving the discretion of the Government, the Minister will request that a colleague be officially appointed to act for the ministry concerned for the purpose of dealing with that matter.

Fourth, while holding office, Ministers will abstain from day to day participation in any business or professional activity.

Fifth, Ministers will disclose any change in their holdings of any types of property originally disclosed by them.

With respect to share interests in public corporations, Ministers and their families will be required to

divest themselves of such holdings, or, as an alternative, to place all such holdings in the hands of a trustee, provided, in the latter case, that certain conditions are met.

The most important of these conditions is that the trust must provide that, apart from withdrawing funds from the trust or placing additional funds in it, Ministers will exercise no control whatsoever over the investment decisions or management of the trust. All such matters must be left to the discretion of the trustee.

Further, the trustee must be licensed under The Loan and Trust Corporations Act of Ontario.

If a Minister has such a trust presently in existence, and should it be continued, the conditions shall be changed to conform to these guidelines.

Members of the Government will be given reasonable time to comply with these guidelines. Their land holdings will be made available for disclosure within a few days and the disclosure of other holdings, where applicable, will be made within a month.

A Minister desiring to set up a trust, should have established the trust and disclosed its management provision by the end of the year.

All disclosures required of Ministers will be filed with the Clerk of the Legislative Assembly where they will be available for public examination.

I am giving further consideration to this matter as to the possible application of these guidelines to members of the public service holding certain administrative positions. I believe it is necessary, before a determination is made, that further study be given to the question and that there be an opportunity for discussion with those concerned.

I have also given consideration to the matter of conflict of interest as it pertains to the private members of the Legislature. I have requested the Chairman of the Ontario Commission on the Legislature that he and his colleagues examine the question as to its application to private members. Subsequent to the Commission's deliberations and findings, the Legislature itself will be consulted and its decisions will, of course, be the determinant factor.

The guidelines which I have established are not exhaustive, nor could they, in reality, embrace all possible situations representing or suggesting a conflict of interest. The guidelines constitute a precedent, and the determination to impose them is my own.

ONT

APPENDIX 2

MINISTERS

CONFLICT OF INTEREST

STATEMENT ON GUIDELINES WITH RESPECT TO CONFLICT OF INTEREST - SEPTEMBER, 1985

In defining these guidelines for the purpose of clarification, "family" should be taken to mean the spouse of the Minister and minor children, and the guidelines will apply to present Ministers of the Government and to those appointed in the future, and, further, any reference to "land" means specifically land in Ontario.

All members of Cabinet will make public disclosure of the following categories of properties owned by them, in whole or in part, or by their spouses, or their minor children, whether directly held by them, or indirectly through companies or nominees.

First, all land owned in Ontario except property occupied for their own private residential or recreational use, or for the use of their dependents; second, all share or debt interests in private companies and land; third, all partnerships or proprietorships in which they are principals.

During the time members of the Cabinet hold office, they will be subject to the following obligations and restrictions:

Except for land acquired for their personal use for residential or recreational purposes, they and their families will be prohibited from purchasing, directly or indirectly, land or interests in land in Ontario, or interests in land development companies carrying on business in Ontario. The acquisition of farm lands by a Minister, where he or she or his or her family intend to farm it is not ruled out, nor is the private company acquisition of land for normal business purposes, subject, of course, to disclosure as referred to earlier in this statement.

No private company in which a Minister or his or her family have an interest may become contractually involved with the Government of Ontario unless the interest of the Minister or family has been placed in a "blind trust" set up in accordance with these guidelines. It shall be the responsibility of the Trustee to ensure that if any matter affecting that interest comes before the Ministry for which that Minister is responsible, officials in the Premier's office are advised so that a colleague of the Minister can be appointed to act for the Ministry concerned for purposes of dealing with the matter.

The rule against contracts with the government does not preclude Ministers from entering into any contract with the government which is provided for by legislation or regulation and which, by the terms of the legislation or regulation, is available evenhandedly to all members of the public (i.e. OHIP) or to a specific class of members of the public (i.e. crop insurance).

Third, while holding office, it will be the responsibility of the individual Minister to ensure that whenever a matter involving a personal beneficial interest comes before the ministry for which the Minister is responsible, being a matter involving the discretion of the Government, the Minister will request that a colleague be officially appointed to act for the ministry concerned for the purpose of dealing with that matter.

Fourth, while holding office, Ministers will abstain from day to day participation in any business or professional activity.

Fifth, Ministers will disclose any change in their holdings of any types of property originally disclosed by them.

With respect to share interests in public corporations, Ministers and their families will be required to divest themselves of such holdings, or, as an alternative, to place all such holdings in the hands of a trustee, provided, in the latter case, that certain conditions are met.

The most important of these conditions is that the trust must provide that, apart from withdrawing funds from the trust or placing additional funds in it, Ministers will exercise no control whatsoever over the investment decisions or management of the trust. All such matters must be left to the discretion of the trustee. However, in some cases, like the case of a closely held family company, the nature of the trust property may be such that the trustee will simply hold the asset or assets, rather than dispose of them or otherwise invest them; a Minister may under these guidelines create this type of "frozen" blind trust.

Further, the trustee must be licensed under the Loan and Trust Corporations Act of Ontario.

If a Minister has such a trust presently in existence, and should it be continued, the conditions shall be changed to conform to these guidelines.

Members of the Government will be given reasonable time to comply with these guidelines. Their land holdings will be made available for disclosure within a few days and the disclosure of other holdings, where applicable, will be made within a month.

A Minister desiring to set up a trust, should have established the trust and disclosed its management provision by the end of the year.

All disclosures required of Ministers will be filed with the Clerk of the Legislative Assembly where they will be available for public examination.

These guidelines are not exhaustive, nor could they, in reality, embrace all possible situations representing or suggesting a conflict of interest.

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